

MURFREESBORO CITY COUNCIL

Regular Meeting Agenda

Murfreesboro Police Headquarters, Community Room
February 13, 2019 – 11:30 a.m.

Action Items

1. Airport Construction Agreement
2. Detailed Bond Resolution and Loan Agreement

New Business

3. Chamber of Commerce Presentation
4. Water Resources Policies, Procedures, and General Design Requirements Revisions
5. Review of Pension Plan

Other Business

Adjournment

COUNCIL COMMUNICATION

Meeting Date: 2/12/2019

Item Title: Murfreesboro Airport Terminal Project

Department: Airport

Presented by: Chad Gehrke, Airport Manager

Summary

- 1) Request approval of the Design Build Contract with Smith Design Build for the new Terminal at the Murfreesboro Municipal Airport.
- 2) Information regarding Lease Agreement with Middle Tennessee State University – Aerospace Department requesting to lease space in the new Terminal

1) Request approval of the Design Build Contract with Smith Design Build for the new Terminal at the Murfreesboro Municipal Airport.

Background Information

As reported to the City Council in December, The PBA selected the design presented by the team of Smith Design Build (Murfreesboro) and Lowen + Associates (Nashville). This design proposes a 15,200 sq. ft. terminal building (the current building is approximately 4,000 sq ft), with a large main lobby, ground and elevated observation areas, lounge seating, leasable office space (2,000 sq. ft.), leasable business center, conference room space, a comfortable pilot's lounge, suitable office space for the airport staff, adequate parking, and impressive circular drive with beautiful landscaping and signage.

Council Priorities Served:

Strong and Sustainable Financial and Economic Health

The method by which this facility is being acquired provides the City more control of the building process from a budgetary standpoint. The facility itself will be very efficient and built with sustainability in mind.

Excellent Services with a Focus on Customer Service

Customer service is improved with the addition of this new Terminal, which will serve as the City's front door and will truly reflect and promote business and economic growth. The new facility will tremendously enhance our ability to provide excellent service to the flying and non-flying public. This new facility will also better represent our great community to whomever passes through its doors.

Fiscal Impacts

City Staff have spent a great deal of time preparing and reviewing the Design Build Contract with Smith Design Build. Blake Smith has signed the AIA Contract providing

for the construction of the Terminal and built out lease office space for a customer for \$4,592,240.00. The City Staff have also investigated the items that the City is responsible for providing and have confirmed that those items are within our budget.

Operational Issues

Operational concerns during the construction process will be addressed in the construction contract. The contractor has, for example, agreed to provide temporary office space for the Airport Staff and airport tenant during construction.

2) Information regarding Lease Agreement with Middle Tennessee State University – Aerospace Department for office space in the new Terminal

Background Information

The new Terminal includes 2,080 square feet available lease space. Originally the space was not going to be built out. Middle Tennessee State University and its Aerospace Department approached the City early on about leasing space. The Aerospace Department has continued to experience a tremendous amount of growth and require a large classroom for 60 to 75 students which is currently not available at any of their current Airport Campus facilities. The University has identified the use of this lease space for a large classroom, a small office, and small seating area. Not associated with this Lease Agreement, the City of Murfreesboro is working with Middle Tennessee State University to provide a space in the lobby area where it can set up audio visual displays to promote the University and its various programs. City Staff hope that this area and the displays will demonstrate to all the importance of the University to our community and the great working relationship we enjoy.

Council Priorities Served:

Strong and Sustainable Financial and Economic Health

This Lease Agreement with Middle Tennessee State University provides the Aerospace Department much needed classroom space until new facilities are able to be constructed in the near future. It also assists the Airport with revenue to maintain this new beautiful Terminal.

Fiscal Impact

The Lease Agreement (Transient Use Agreement) being negotiated at this time with the University will provide revenue for the Airport to go towards the maintenance and upkeep of the new facility. The cost to build out the approximately 2,080 square feet of lease space is \$92,240 which will be paid for in two years.

Operational Issues

There are no operational issues associated with this Agreement or the use of the Terminal by the University. In fact, the build out of this space and the area in the lobby provided to the University will greatly assist the promotion of the University and demonstrate the great working relationship between the City of Murfreesboro and Middle Tennessee State University.

ATTACHMENTS:

- 1) Smith Design Build Contract
- 2) Smith Design Build Exhibit A
- 3) Smith Design Build Exhibit B
- 4) Terminal-MTSU Usage Exhibit B

DRAFT AIA® Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-BUILDER

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

«City of Murfreesboro,» «a Tennessee municipal corporation »
«111 West Vine Street»
«Murfreesboro, TN 37130»
« »

and the Design-BUILDER:
(Name, legal status, address and other information)

«Smith Design Build Corp, Inc., » «a Tennessee corporation »
«412 Golden Bear Court»
«Murfreesboro, TN 37128»
« »

for the following Project:
(Name, location and detailed description)

«Murfreesboro Municipal Airport Terminal»
«1930 Memorial Boulevard»
«Murfreesboro, TN 37129»

The Owner and Design-BUILDER agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

«is set forth in Design-Builders's Proposal, attached hereto as Exhibit C. »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

Commented [AT1]: Please provide me with the information to fill in this section.

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

«are set forth in Design-Builders's Proposal, attached hereto as Exhibit C.»

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

«are set forth in Design-Builders's Proposal, attached hereto as Exhibit C.»

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

«are set forth in Design-Builders's Proposal, attached hereto as Exhibit C.»

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

« N/A »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

« Four Million Five Hundred Ninety-Two Thousand Two Hundred Forty Dollars (\$4,592,240.00). »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« N/A »

Commented [AT2]: Insert Dates

.2 Submission of Design-Builder Proposal:

« N/A »

Commented [AT3]: Insert Date

.3 Phased completion dates:

« N/A »

Commented [AT4]: Insert Date

.4 Substantial Completion date:

« Three Hundred Sixty-Five (365) days from the date of commencement, which shall be the date of issuance of the building permit from the City of Murfreesboro. »

.5 Other milestone dates:

« »

Commented [AT5]: Insert Dates, If Any

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

«Lowen + Associates, 2700 Belmont Boulevard, Suite A, Nashville, TN 37212-»

.2 Consultants

- «Civil Engineering/Landscape Architecture/Land Surveying: SEC, Inc., 850 Middle Tennessee Boulevard, Murfreesboro, TN 37129 »
- Structural Engineering: PWP Structural Engineering, 4300 Sidco Dr #202, Nashville, TN 37204
- Electrical/HVAC/Plumbing Engineering: Harpeth Park Engineering, 256 Seaboard Lane #G101, Franklin, TN 37067
- Fire Protection Systems: Tri-State Sprinkler Corp., Inc., 661 Patterson Ave, Murfreesboro, TN 37129-»

.3 Contractors

«N/A »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« »

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

«Greg McKnight, Project Development Manager-»

«City of Murfreesboro »

«111 West Vine Street »

«Murfreesboro, TN 37130 »

«gregmcknight@murfreesborotn.gov-»

«(629) 219-6369 »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

«Gary Whitaker, Assistant City Manager, gwhitaker@murfreesborotn.gov, (616) 849-2629 »

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User Notes:

(1833194321)

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

« Identified in Attachment C – “Scope of Work” »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

«Blake Smith, President »
«Smith Design/Build »
«412 Golden Bear Court »
«Murfreesboro, TN 37128 »
« »
«(615) 896-4750 »

Commented [AT6]: Insert email address

§ 1.2.5 Neither the Owner’s nor the Design-Builder’s representative shall be changed without ten days’ written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[☒] Arbitration pursuant to Section 14.4

[☐] Litigation in a court of competent jurisdiction

[☐] Other: (Specify)

« »

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. In the event of any conflict, inconsistency or other discrepancy between any of the Design-Build Documents, the Design-Build Documents shall be given priority in the following order: (1) executed Change Orders and Amendment with those executed most recently given priority; (2) the Agreement; and (3) the Drawings and the Specifications.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

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User Notes: (1833194321)

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Build, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials. [The Owner is the owner of all right, title and interest, including all rights under federal and state copyright and intellectual property laws, in the Instruments of Service and the electronic methods of reproducing them. The Architectural Works of the Project, as defined by the federal Architectural Works Copyright Protection Act, are owned by Owner](#)

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Build proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Build. The Design-Build is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Build” means the Design-Build or the Design-Build’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Build for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Build for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Build. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Build for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 Knowledge. [The terms “knowledge,” “recognize,” and “discover,” their respective derivatives, and similar terms in the Design-Build Documents, as used in reference to the Design-Build, shall be interpreted to mean that which the Design-Build knows \(or should know\), recognizes \(or should recognize\), and discovers \(or should discover\) in exercising the care, skill, and diligence required by the Design-Build Documents. Analogously, the expression “reasonably inferable” and similar terms in the Design-Build Documents shall be interpreted to mean reasonably inferable by a design-builder, architect, or contractor \(as applicable under the circumstances\) familiar with the Project and exercising the care, skill, and diligence required of the Design-Build by the Design-Build Documents.](#)

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

~~§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. Owner acknowledges that the Design-Builder performed design and other work related to the Project prior to the execution of the Design-Build Amendment. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows in accordance with the Schedule of Values attached as Exhibit A to the Design-Build Amendment.:~~

~~(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)~~

~~«--»~~

~~§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below:~~

~~(If applicable, attach an exhibit of hourly billing rates or insert them below.)~~

~~«--»~~

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

~~§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:~~

- ~~.1 — Transportation and authorized out-of-town travel and subsistence;~~
- ~~.2 — Dedicated data and communication services, teleconferences, Project web sites, and extranets;~~
- ~~.3 — Fees paid for securing approval of authorities having jurisdiction over the Project;~~
- ~~.4 — Printing, reproductions, plots, standard form documents;~~
- ~~.5 — Postage, handling and delivery;~~
- ~~.6 — Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;~~
- ~~.7 — Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;~~
- ~~.8 — All taxes levied on professional services and on reimbursable expenses; and~~
- ~~.9 — Other Project-related expenditures, if authorized in advance by the Owner.~~

~~§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of «--» percent («--»%) of the expenses incurred.~~

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

~~§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid «--» («--») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.~~

~~(Insert rate of monthly or annual interest agreed upon.)~~

~~«--»% «--»~~

~~§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.~~

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly within thirty (30) days after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Following development and submittal of the construction schedule, the Design-Builder shall, at the end of each calendar month occurring thereafter during the period of the time required to finally complete the Work or at such earlier intervals as circumstances may require, update and/or revise the construction schedule to show the actual progress of the Work performed and the occurrence of all events which have affected the progress of performance of the Work already performed or which will affect the progress of performance of the Work yet to be performed. Failure of the Design-Builder to update, revise and submit the construction schedule as aforesaid shall be sufficient grounds for the Owner to find the Design-Builder in substantial default and constitute sufficient cause to terminate the Contract or to withhold payment to the Design-Builder until a schedule or schedule update acceptable to the Owner is submitted.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.9.3 The construction schedule shall be in a detailed precedence-style critical path management ("CPM") or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Design-Build Documents (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Design-Build Documents and attached to the Agreement. If not accepted, the construction schedule shall be promptly revised by the Design-Builder in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Design-Builder shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Section 3.1.9.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 3.1.9.4 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Design-Build Documents due to the fault of the Design-Builder, the Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Design-Build Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Design-Builder's compliance with the construction schedule.

.1 The Design-Builder shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.1.9.4.

2 The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.1.9.4 as frequently as the Owner deems necessary to ensure that the Design-Builder's performance of the Work will comply with any Milestone Date or completion date set forth in the Design-Build Documents.

§ 3.1.9.5 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof. The Design-Builder shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.1.9.5 may be grounds for an extension of the Contract Time, if permitted under Section 8.2, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Design-Builder in compliance with the requirements of the Design-Build Documents, and (ii) such rescheduling or postponement is required for the convenience of the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty.

§ 3.1.12.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.2 For a period of one year from the date of issuance of the Final Certificate of Payment for the work, the Design-Builder shall furnish and install, without cost to the Owner, any and all kinds of work which in the judgment of the Owner, proves defective in materials and or workmanship.

§ 3.1.12.3 The Design-Builder agrees to secure, assign, and deliver to the Owner at the time of final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. Such written warranties shall extend for the benefit of and be available to be asserted in the name of the Owner. Delivery of such written warranties is a condition precedent to final payment. If necessary as a matter of law, the Design-Builder may retain the right or the Owner may require Design-Builder to exercise the right to enforce directly any such manufacturers' warranties during the one-year period following the date of Substantial Completion.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder's indemnity obligations under this Section 3.1.14 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Design-Builder, a Contractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Design-Builder, a Contractor, or any person or entity for whom either is responsible.

§ 3.1.14.4 The Design-Builder shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing any of the Design-Builder's defense, indemnity, and hold-harmless obligations under this Contract.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and

- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)



Commented [AT7]: Add anything you think would be appropriate

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the

Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing,

stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract

Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.1 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Design-Builder. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Design-Builder. The Design-Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 5.9.2 The Design-Builder and any entity for whom the Design-Builder is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 5.9.3 Without limitation of any other provision of the Design-Build Documents, the Design-Builder shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Design-Builder shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

.1 Without limitation of any other provision of the Design-Build Documents, the Design-Builder shall use its best efforts to comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Design-Builder shall immediately notify the Owner in writing if during the performance of the Work, the Design-Builder finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

.2 The Design-Builder shall also comply with all insurance requirements applicable to use and occupancy of the Project site and the Building.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate ~~contractor~~ Design-Builder except with written consent of the Owner and of such separate ~~contractor~~ Design-Builder; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate ~~contractor~~ Design-Builder the Design-Builder's consent to cutting or otherwise altering the Work. Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, walks, landscape materials, and other improvements that are damaged or removed due to required excavations or Design-Builder's Work, shall be patched, repaired, or replaced by the Design-Builder to the satisfaction of the Owner, the owner of such structures and facilities, and authorities having jurisdiction as required by the Plans and Specifications. In the event that a local authority having jurisdiction requires that such repairing and patching be done with its own labor and/or materials, the Design-Builder shall abide by such regulations and pay for such work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Owner may need access to or use of certain areas of the site or Work prior to the Design-Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Design-Builder shall not enter any Owner-occupied area of the site or Project unless first approved and scheduled by the Owner. The Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work. The Design-Builder shall afford the Owner's own forces, and the Owner's other consultants, trade contractors, subcontractors and suppliers, access to the site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Design-Build Documents. The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.13.1.5 The Design-Builder accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Design-Build Documents. The Design-Builder shall be responsible for such pre-purchased items, if any, as if the Design-Builder were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Design-Build Documents shall also apply to any pre-purchased items, unless the Design-Build Documents specifically provide otherwise.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive. Except as permitted in Section 6.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Design-Build Documents or a change in any time period provided for in the Design-Build Documents.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

All Change Orders must be on the form designated by Owner. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including,

but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly. All Change Directives must be on the form designated by Owner.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner

to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Extent of Owner Rights.

The rights stated in this Article 2 and elsewhere in the Design-Build Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Design-Build Documents, (ii) at law, or (iii) in equity. In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Design-Build Documents.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.2.2 The Design-Builder and each Contractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a current Design-Builder's lien waiver and duly executed and acknowledged sworn statement showing all Contractors and material suppliers with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the amount requested for any Contractor and material supplier in the requested progress payment, and the amount to be paid to the Design-Builder from such progress payment, together with similar sworn statements from all such Contractors and material suppliers; (ii) duly executed waivers of mechanics' and material suppliers' liens from all Contractors and, when appropriate, from material suppliers and lower tier Contractors establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous Application for Payment; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Design-Builder shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs

of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

The Design-Builder shall also comply with the following specific requirements:

.1 The aggregate cost of materials stored off site shall not exceed \$ 50,000 at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, recorded financing statements, UCC filings, and UCC searches.

.3 With each Application for Payment, the Design-Builder shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Design-Builder shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Lender, (ii) specifically marked for use on the Project, and (iii) segregated from other materials at the storage facility.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

.1 The Design-Builder further expressly undertakes to defend the Indemnitees, at the Design-Builder's sole expense, against any actions, lawsuits, or proceedings brought against the Indemnitees as a result of liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, payments due the Design-Builder, or any portion of the property of any of the Indemnitees (referred to collectively as "liens" in this Section 9.3.3). The Design-Builder hereby agrees to indemnify and hold the Indemnitees harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.

.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Design-Builder obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than Two Hundred percent (200%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Design-Builder shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnitees. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Design-Builder and shall not be part of, or cause any adjustment to, the Contract Sum.

.3 Notwithstanding the foregoing, except in the event that (i) a bond surety has provided indemnification for and continues to actively pursue the full release of any lien through the most expedient means; and (ii) the lien is causing the Owner to incur no negative consequences or costs, the Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Design-Builder or surety shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1. If, subsequent to issuing any certificate pursuant to this Section 9.4, the Owner should determine that any previous certificate was in error (whether by review of additional conditions or documents, discovery of mathematical error, or any other reason), then the Owner shall issue a Revised Certificate for Payment, setting forth the changes in the amounts due Design-Builder as well as the reason for such revision.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment to the extent necessary in the Owner's reasonable opinion to protect the Owner while any of the conditions described in 9.5.1.1 through 9.5.1.7 remain.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 If any claim or lien is made or filed with or against the Owner, the Project, or the Premises by: (i) (y) any person claiming that the Design-Builder or any Contractor; or (z) other person under it has failed to make payment for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the work; or (ii) if at any time there shall be evidence of such nonpayment or of any claim or lien for which, if established, the Owner might become liable and which is chargeable to the Design-Builder, or (iii) if the Design-Builder or any Contractor or other person under it causes damages to the Work or to any other work on the Project, or (iv) if the Design-Builder fails to perform or is otherwise in default under any of the terms or provisions of the Contract Documents, the Architect shall withhold certification and the Owner shall have the right to retain from any payment then due or thereafter to become due an amount which the Architect shall deem sufficient to (1) satisfy, discharge and/or defend against any such claim or lien or any action which may be brought or judgment which may be recovered thereon; (2) make good any such nonpayment, damage, failure or default; and (3) compensate the Owner for an indemnity if against any and all losses, liability, damages, costs and expenses, including reasonable attorney's fees and disbursements, which may be sustained or incurred by the Owner in connection therewith. The Owner shall have the right to apply and charge against the Design-Builder so much of the amount retained as may be required for the foregoing purposes and if such retained amount is insufficient therefore, the Design-Builder shall be liable for the difference and pay the same to the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents. If the Owner fails to make any such payment in full when due, the Design-Builder shall be entitled to a late fee of 1.5% of the outstanding balance on the Certificate for Payment. Such late fee shall be imposed on the day after payment is due and in addition to the original contract sum.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event

more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

.1 Without creating any obligation to do so, the Owner may elect to make payments jointly to the Design-Builder and to the Contractor identified on the Design-Builder's Application for Payment, unless the Design-Builder has any reasonable objection based upon an event of default under the Design-Builder's agreement with the Contractor. Payment by the Owner to the Design-Builder and Contractor jointly shall not create a contractual relationship between the Owner and the Contractor, obligate the Owner to pay the Contractor directly in the future, or create contractual rights under the Contract for Construction in the Contractor against the Owner.

.2 Without creating any obligation to do and notwithstanding any other provisions to the contrary, the Owner reserves the right to make payment directly to any Contractor of the Design-Builder in such amounts as the Owner determines to protect the Owner's interest and the Owner's property from a lien or asserted lien or other claim, and the amount owed the Design-Builder shall be reduced by the amount of any claim, and the amount owed the Design-Builder shall be reduced by the amount of any such payment by the Owner. Exercise of this option shall not create any claims or rights by any Contractor or other party against the Owner or the Owner's funds. This right may also be exercised through the Owner's title company making such payments.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

§ 9.7.1 If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Contract Documents, such payment shall be made timely upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Design-Builder fails to timely make any payment due the Owner, in no event more than five business days from demand, or if the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or (ii) issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.7 The acceptance of Substantial Completion and final payment shall constitute a waiver of all claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of the Application for Payment for Substantial Completion, and except for the retainage sums due at final acceptance.

§ 9.8.8 The Design-Builder shall be responsible for collecting, identifying, indexing and collating the following materials from the Contractors, and will deliver the finished document to the Owner to verify completeness.

§ 9.8.8.1 Complete equipment diagrams, operating instructions, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, test and balance reports, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished under this Contract to be supplied in a ring binder, hard-cover book, properly indexed for ready reference. Also, specific information regarding manufacturer's name and address, nearest distributor and service representative's names, addresses, office and home phone numbers, make and model numbers, operating design and characteristics, etc., will be required. All information submitted shall be current as of the time of submission.

§ 9.8.9 Subsequent to the time of Substantial Completion and receipt of contract record sets and operations and maintenance books, but prior to the date of final acceptance, the Design-Builder and/or Contractor shall provide a competent and experienced person (or persons) thoroughly familiar with the Work for a reasonable period of time but not less than 40 hours to instruct the Owner's personnel in operation and maintenance of equipment and control systems. This instruction will include normal start-up, run, stop, and emergency operations, location and operation of all controls, alarms and alarm systems, etc. The instruction will include tracing the system in the field and on the diagrams in the instruction booklets so that operation personnel will be thoroughly familiar with both the system and the data supplied.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

.1 All warranties and guarantees required under or pursuant to the Design-Build Documents shall be assembled and delivered by the Design-Builder to the Owner as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Owner until all warranties and guarantees have been received and accepted by the Owner. The Design-Builder's final Application for Payment shall be accompanied by a completed and notarized Certificate of Contract Completion in the form prescribed by the Owner. Any items required by the Design-Build Documents not previously submitted shall accompany the final Application for Payment.

.2 The Owner will make only one inspection to determine Final Completion. If this inspection determines that the work is not finally complete, successive inspections requested by the Design-Builder shall be charged to the Design-Builder at a rate of \$500.00 per person per day plus expenses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover

the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. Releases of liens shall be furnished by the Design-Builder on AIA Document G706 or a form approved by the Owner. Contractors and materials suppliers' lien releases may be provided by the Design-Builder.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; ~~or~~
- .3 terms of special warranties required by the Design-Build Documents; or
- .4 damages including attorney's fees and costs incurred by the Owner resulting from lawsuits brought against the Owner or its agents, employees or representatives because of acts or omissions on the part of the Design-Builder, any Contractor, or any of their employees, agents or representatives.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.1.2 The Design-Builder shall require all of its employees and the employees of Contractors to conduct themselves in a safe and professional manner and in conformity with all work procedures, either endorsed or prohibited, and utilizing all personal protection devices included, within OSHA and TOSHA Construction Safety Regulations. The Design-Builder shall take all necessary precautions for the safety of the persons on or near the site of the Work, and shall comply with all applicable laws, rules, regulations and orders to prevent accidents or injuries to persons on or in the proximity of the Project site. The Design-Builder shall put into place a meaningful and effective safety program comprised of regular safety training of its employees on site, focusing upon various topics which, from time to time, its employees are likely to encounter in performing the Work. The Owner will cooperate with all safety audits and recommendations with regard to improving worker's safety, but the Design-Builder hereby acknowledges and agrees that the Owner is not responsible, in whole or in part, for the Work, execution of the Work or initiating, maintaining and supervising any safety precautions and programs in connection with the Work or the Project.

§ 10.1.3 Without limiting or diminishing the Constructors responsibility for protection of the site of the Work as set forth in 10.1.1, Design-Builder shall:

.1 Protect excavation, trenches, buildings and grounds from water damage of any sort, furnishing the necessary equipment to provide this protection during the life of the contract and Constructing and maintaining necessary temporary drainage to keep excavations free of water.

.2 Provide protection for the work against wind, storms, cold or heat. At the end of each day's work, cover new work likely to be damaged. If low temperatures make it impossible to continue operations safely in spite of cold weather precautions, cease work and notify Architect.

.3 Provide shoring and bracing required for safety and for the proper execution of the work and have same removed when the work is completed.

.4 Protect, maintain and restore any bench marks, monuments, etc. affected by this work. If bench marks or monuments are displaced or destroyed, points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of his work.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Design-Builder.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel. In the event the use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Design-Builder shall give the Owner reasonable advance notice.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable

time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.2.10 The Design-Builder shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up. The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Design-Builder, any Contractor, any material supplier, or any entity for whom any of them is responsible. The Design-Builder agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 Subject to the provisions of the Tennessee Governmental Tort Liability Act, and to the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Owner reserves all rights, privileges, and immunities under the Tennessee Governmental Tort Liability Act and other applicable laws, and nothing herein shall be construed as a waiver of Owner's sovereign immunity in whole or in part.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the

Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. If prior to the date of Substantial Completion, the Design-Builder, a Contractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Design-Builder shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Design-Builder shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Design-Builder, a Contractor, a subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Design-Builder is responsible.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. For purposes of the preceding sentence, Design-Builder shall correct such Work promptly if Design-Builder commences such correction within seven days following the date of written notice from the Architect and thereafter diligently prosecutes such correction to completion. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2. Upon completion of any Work under or pursuant to this Section 11.2, the one-year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Section 11.2 shall cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect,

Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 Upon such termination, the Design-Builder shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits and overhead. The Owner shall be credited for (i) payments previously made to the Design-Builder for the terminated portion of the Work, (ii) claims that the Owner has against the Design-Builder under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Design-Builder that are part of the Contract Sum.

.1 Any such payment to Design-Builder pursuant to this Section 14.4.3 constitutes the exclusive remedy Design-Builder may have against Owner for its work on the Project once Owner has terminated Design-Builder for convenience, and is in place of any other claim or recovery Design-Builder may have against Owner arising out of or in any way connected with the Project, including but not limited to any claim for breach of the Agreement. In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided,

however, that the claimant shall use its best efforts to furnish the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 Extensions of time will not be granted for delays caused by inadequate construction force or the failure of the Design-Builder to place orders for equipment or materials sufficiently in advance to insure delivery when needed. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents. In no event shall this mutual waiver be deemed to preclude (i) an adjustment to the Contract Sum; or (ii) the obligation to reimbursement the Owner for any fines from governmental entities or additional costs and expenses for consultants or separate contractors arising out of any act or omission of the Design-Builder.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner

shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

§ 14.4.4.4 Notwithstanding anything to the contrary in this Section 14.4.4, neither the Owner nor Design-Builder may be required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defenses in any action that is commenced by a third-party who is not obligated by contract to arbitrate disputes with the Owner and Design-Builder.

§ 14.4.4 Exceptions

§ 14.4.4.1 The Owner or Design-Builder may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice (but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Tennessee law), without the necessity of initiating or exhausting the procedures of this Exhibit.

§ 14.4.4.2 Article 14 does not apply to, and may not be construed to require arbitration of, any claims, actions or other process undertaken, filed, or issued by the City of Murfreesboro Building Safety Department, Code Compliance Department, Police Department, Fire Department, or any other agency of the Owner (the City) acting in its governmental permitting, for the benefit of public health, safety, and welfare, or other regulatory capacity.

§ 14.4.4.2 Either party may immediately bring a proceeding seeking preliminary and temporary injunctive relief in a court having jurisdiction thereof which shall remain in effect until a final determination is made in the arbitration, which may include an award of money damages, permanent injunctive relief, or any other form of equitable relief.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. In case the Design-Builder, on written consent of the Owner, assigns all or any part of any money due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee to any money due or to become due to the Design-Builder shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Contract Documents.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense. The Design-Builder also agrees the cost of testing services required for the convenience of the Design-Builder in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Design-Builder.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.9 Venue

Exclusive venue for any dispute arising from this Agreement or relating to this Project shall be in the Circuit or Chancery Courts of Rutherford County, Tennessee.

§ 15.10 Attorneys' Fees

If either party is required to bring an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees from the non-prevailing party.

§ 15.11 Theft-Deterrence Program

The Design-Builder shall institute a theft-deterrence program designed to restrict construction worker access to properties of the Owner that are currently in use, to maintain supervision of the Design-Builder's and the Design-Builder's Contractor's forces, and to reimburse the Owner or those persons suffering a theft loss which results from the Design-Builder's forces or the Design-Builder's Contractor's forces, as charged and determined by the local authorities having jurisdiction.

§ 15.11 No Construction Against Maker of Modifications

As a material consideration of the making of this Agreement, the modifications to this Agreement shall not be construed against the maker of said modifications.

§ 15.10 Notices Regarding Liens

§ 15.10.1 Design-Builder shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Design-Builder shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 15.10.2 Design-Builder shall provide Owner with copies of all notices received by Design-Builder from Contractors, subcontractors, and/or suppliers to Design-Builder.

§ 15.13 Utility Service

The Design-Builder shall provide and maintain at his own expense any water, electric, or other utility service used in the construction of the work.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment
- .3 [Exhibit B, Insurance and Bonds](#)
- .4 [Other:Exhibit C, Design-Builder's Proposal](#)

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This Agreement entered into as of the day and year first written above.

OWNER (Signature)

«Shane McFarland,»« Mayor »

(Printed name and title)

DESIGN-BUILDER (Signature)

«Blake Smith, »«President »

(Printed name and title)

DRAFT AIA® Document A141™ – 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the “Agreement”)
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

«[Murfreesboro Municipal Airport Terminal](#) »
«[1930 Memorial Boulevard](#)
[Murfreesboro, TN 37129](#) »

THE OWNER:

(Name, legal status and address)

«[City of Murfreesboro,](#) »«[a Tennessee municipal corporation](#) »
«[111 West Vine Street](#)
[Murfreesboro, TN 37130](#) »

THE DESIGN-BUILDER:

(Name, legal status and address)

«[Smith Design/Build Corp., Inc.,](#)»«[a Tennessee corporation](#) »
«[412 Golden Bear Court](#)
[Murfreesboro, TN 37128](#) »

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

[« »] Stipulated Sum, in accordance with Section A.1.2 below

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[« »] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[« X »] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be « » (\$ « »), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

« »

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

« »

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

« shall be as stated in the Schedule of Values. »

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « Four Million Five Hundred Ninety-Two Thousand Two Hundred Forty Dollars » (\$ « 4,592,240.00 »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

« »

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below The Schedule of Values, attached hereto as Attachment A, is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price. The Schedule of Values reflects all of

[the Work to be performed by the Design-Builder in connection with the Project, both before and after the execution of the Design-Build Amendment.](#)

(Provide information below or reference an attachment.)

« »

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

«-Alternate #1 (see Attachment B hereto) – Add to contract the sum of Ninety-Two Thousand Two Hundred Forty Dollars (\$92,240.00) for Scope of Work for MTSU lease space »

§ A.1.4.3.4 Unit Prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
Changes to Scope of Work		Cost plus five percent (5%)

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« N/A »

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« N/A »

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « 30th » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « 30th » day of the «following» month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than «Thirty» («-30») days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its

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User Notes:

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accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment ~~which have not been delivered and stored at the site.~~

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of « » percent (« » %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of « » percent (« » %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

« »

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of « » percent (« » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of « » percent (« » %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of « five » percent (« 5 » %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of « five » percent (« 5 » %);
- .3 Add the Design-Builder's Fee, less retainage of « five » percent (« 5 » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « five » percent (« 5 » %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on

agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4.4 Owner will deposit all retainage held pursuant to the Agreement with Pinnacle Bank to be held by Pinnacle Bank in a separate interest-bearing escrow account (the "Escrow Account") with such deposits made simultaneous with any payment made to Design-Builder and maintained in accordance with a separate retainage agreement among Owner, Design-Builder, and Pinnacle Bank. Owner will reduce retainage to one percent (1%) upon Substantial Completion prior to occupancy by Owner.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than «Three Hundred Sixty-Five» («365») days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« the date of commencement, which shall be the date of issuance of the building permit from the City of Murfreesboro. »

Portion of Work

N/A

Substantial Completion Date

N/A

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

« In the event the Design-Builder fails to achieve Substantial Completion within Three Hundred Sixty-Five days from the date of this Amendment, Owner thereafter will be entitled to liquidated damages of \$1,000.00 per day until Design-Builder achieves Substantial Completion. »

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document

Title

Date

Pages

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

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« See Attachment C hereto »

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:
(Either list the drawings here or refer to an exhibit attached to this Amendment.)

« See Attachment D hereto »

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
N/A		

Other identifying information:

« N/A »

§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

« See Attachment E hereto »

.2 Contingencies

« »

§ A.3.1.6 Design-Builder's assumptions and clarifications:

« N/A »

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

« N/A »

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« Proposed furnishings and any design changes. »

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

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.1 Superintendent

« »

.2 Project Manager

« »

.3 Others

« »

Commented [AT1]: Insert

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

« See Agreement, § 1.1.8 »

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

All costs to be reimbursed and paid under the Agreement shall be reflected in the Schedule of Values, attached as Attachment A hereto.

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the

completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

~~§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items~~

~~§ A.5.1.4.1~~ Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

~~§ A.5.1.4.2~~ Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

~~§ A.5.1.4.3~~ Costs of removal of debris from the site of the Work and its proper and legal disposal.

~~§ A.5.1.4.4~~ Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

~~§ A.5.1.4.5~~ Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

~~§ A.5.1.5 Miscellaneous Costs~~

~~§ A.5.1.5.1~~ Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

~~§ A.5.1.5.2~~ Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

~~§ A.5.1.5.3~~ Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

~~§ A.5.1.5.4~~ Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

~~§ A.5.1.5.5~~ Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

~~§ A.5.1.5.6~~ With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

~~§ A.5.1.5.7~~ Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- 1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- 2 Expenses of the Design-Builder's principal office and offices other than the site office;
- 3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- 4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- 5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- 6 Any cost not specifically and expressly described in Section A.5.1; and
- 7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from

the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER (Signature)

«Shane McFarland,» «Mayor »
(Printed name and title)

OWNER (Signature)

«»«»«»

DESIGN-BUILDER (Signature)

«Blake Smith,» «President »
(Printed name and title)

DESIGN-BUILDER (Signature)

«»«»«»

(Printed name and title)

(Printed name and title)



EXHIBIT B

DESIGN-BUILDER'S INSURANCE AND BOND REQUIREMENTS

Design-Builder must, as a material obligation to the Owner and a condition precedent to any payment otherwise due to Design-Builder, furnish and maintain, and cause its Subcontractors to furnish and maintain, the insurance and bonds required by this Exhibit.

Design-Builder must secure and maintain such insurance coverage and bonds, without interruption, from the date of commencement of the Work until the later of the date of Final Completion, the date of final payment, or the date until which this Agreement requires any coverage to be maintained after final payment, in accordance with the requirements set forth below.

1. Commercial General Liability Insurance.

- 1.1 The CGL policy must be written on an occurrence basis, on ISO form CG 001 or its equivalent, providing coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), contractual liability, incidental professional liability, the hazards commonly referred to as XCU (explosion, collapse, and underground), and products and completed operations, with a combined single limit of liability of not less than \$2,000,000 for each occurrence applicable to the Work, and an annual aggregate limit of liability of not less than \$2,000,000 applicable solely to the Work, and meeting all other requirements of this Exhibit.
- 1.2 The general liability insurance may be accomplished with a combination of a general liability and an excess/umbrella liability policy.
- 1.3 Each general liability policy must be endorsed or written to:
 - a. Include the per project aggregate endorsement;
 - b. Name as additional insureds the following: the City of Murfreesboro and its elected officials, officers, employees, representatives and agents (collectively, the "Additional Insureds");
 - c. Stipulate that the insurance afforded by the policies furnished by Design-Builder will be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs maintained or participated in by the Additional Insureds, or their agents, officials or employees will be excess and not contributory to the liability insurance furnished by Design-Builder and by its Subcontractors;
 - d. Includes a severability of interest clause; and
 - e. Waive all rights of recovery against the Additional Insureds.

2. Workers' Compensation Insurance. Workers' Compensation policy must meet all Tennessee statutory requirements, including Employers' Liability Insurance with limits of at least \$ 1,000,000 per accident or disease per employee, both policies endorsed to waive subrogation against the Additional Insureds.

3. Auto Liability Insurance

- 3.1 Commercial auto liability must be carried with minimum combined single limit of \$1,000,000 per occurrence.

- 3.2 This policy must include a duty to defend and cover all owned, non-owned, leased, hired, assigned or borrowed vehicles.
- 3.3 This policy must be endorsed, by specific or blanket endorsement, to name the Additional Insureds as such, stipulate that any insurance carried by the Additional Insureds must be excess and not contributory, and to waive subrogation against the Additional Insureds.
4. **Environmental Liability.** Design-Builder must secure, pay for, and maintain Design-Builder's Pollution Liability (CPL) coverage, including mold coverage, in an amount not less than \$1,000,000 and endorsing the Owner as an Additional Insured. Design-Builder must also provide to the Owner proof of Design-Builder's Pollution Legal Liability (PLL) for sites owned or operated by Design-Builders and by any Subcontractors handling hazardous or potentially hazardous materials. Environmental liability coverage may be part of a package policy.
5. **Professional Liability.** Design-Builder must secure, pay for, and maintain professional liability coverage in the amount of not less than \$1,000,000 on a form acceptable to the Owner and with tail coverage of not less than two years.
6. **Umbrella Coverage.** Design-Builder must secure, pay for, and maintain professional liability coverage in the amount of not less than \$5,000,000 on a form acceptable to the Owner. Umbrella coverage must not be limited to excess coverage that merely follows form of underlying coverages.
7. **Equipment Property Insurance.** Design-Builder must secure, pay for, and maintain all-risk insurance as necessary and without exceptions in order to protect the Owner against loss of owned, non-owned, rented, or leased capital equipment and tools, equipment and scaffolding, staging, towers and forms owned or rented by Design-Builder, its Subcontractors, or Lower Tier Entities and any construction material in transit (unless shipped FOB destination Project Site or (Incoterm) DAP Project site) or materials stored in any location other than the Site.
8. **Builder's Risk.** Unless otherwise instructed by the Owner, Design-Builder will secure a completed value, all-risk Builder's Risk policy in manuscript form acceptable to Owner for the Project (not merely the Work), including appropriate, as determinate by the Owner, coverages, coverage amounts and limits, deductibles, and exclusions. The Owner must be a named insured and the policy may not terminate until Substantial Final Completion or a certificate of occupancy applicable to the entire property is issued, whichever is latest.
9. **Waiver of Subrogation.** Design-Builder hereby waives, and will require each of its Subcontractors and Lower Tier Entities to waive, all rights of subrogation under all policies against the Owner and other Additional Insureds for losses or damages covered by any policy of insurance. Design-Builder, Subcontractors, and Lower Tier Entities must provide notice of waiver to all insurance carriers.
10. **Term of Coverage**
- 10.1 The products and completed operations liability coverage required by this Agreement must extend for a period of not less than five years after the earlier of Final Payment for the Work, or the termination of the Agreement (the "Completed Operations Term").
- 10.2 If at any time during the Completed Operations Term Design-Builder cannot obtain equivalent coverage by replacement or renewal, Design-Builder must acquire a tail policy prior to expiration of the existing policy that will extend coverage until the end of the Completed Operations Term.

- 10.3 Design-Builder will furnish certificates of insurance and other evidence that the Owner may reasonably require during the Completed Operations Term to establish compliance with the requirements of this paragraph.
- 10.4 All other policies of insurance must be maintained continuously in force from commencement of the Work until the date of Final Payment.

11. Subcontractor and Lower-Tier Entities Insurance Requirements

- 11.1 Design-Builder must require all of Design-Builder's Subcontractors and must require its Subcontractors to require their Lower Tier Entities, as a condition of working on the Project, and of receiving payment, to:
 - a. Purchase and maintain Commercial General Liability, Workers' Compensation and Employer's Liability, and Automotive insurance policies, with the same coverages, endorsements, terms of coverage and other provisions as are required of Design-Builder under by this Exhibit, **EXCEPT THAT** the combined coverage limits of the general liability insurance to be furnished by Lower Tier Entities must be \$ 1,000,000 per occurrence, and \$ 1,000,000 as the annual aggregate limit; and
 - b. Timely furnish to the Owner proper certificates, endorsements, copies of declarations pages, and other documents necessary to establish the Subcontractor's compliance with this Exhibit.
 - c. The Lower Tier Entities' general liability policy must also be endorsed to provide the policy must be primary insurance, the general liability insurance furnished by Design-Builder must be the secondary and non-contributory, and any insurance carried by the Additional Insureds must be excess, tertiary and non-contributory to the insurance furnished by Design-Builder and Subcontractor.
 - d. The Owner has the right to inspect and copy all such certificates, endorsements, or other proof at any reasonable time.

12. Other Policy Provisions. Each policy to be furnished by Design-Builder and each Subcontractor must:

- 12.1 Be issued by an insurance carrier having a rating from A.M. Best Company of at least A-VII or better;
- 12.2 Provide that attorney's fees are outside of the policy's limits and be unlimited;
- 12.3 Include the Project per aggregate endorsement;
- 12.4 Waive all rights of subrogation against the Owner;
- 12.5 Provide a Certificate that contains a provision that coverages afforded under the policies will not be canceled, allowed to expire, or reduced in amount until at least thirty (30) days' prior written Notice has been given to the Owner; and
- 12.6 Be otherwise satisfactory to the Owner. The Owner agrees to consider alternatives to the requirements imposed by this Exhibit but only to the extent that the Owner is satisfied the insurance is not commercially available to the insured. In such event, the Owner has the

right to set conditions for such waiver, including, but not limited to, additional indemnities, and the request that the Owner be a loss-payee under the policy.

13. Certificates and Endorsements

- 13.1 Within 10 days after the execution of this Agreement, Design-Builder must provide the Owner with certificates and endorsements;
- 13.2 Upon the Owner request, Design-Builder must provide the Owner with certificates and endorsements from each of its Subcontractors, in all cases evidencing compliance by Design-Builder, each Subcontractor, and Lower Tier Entities with the requirements of this Exhibit together with letters from the respective carriers (including, but not limited to, the Errors and Omissions insurance carriers) that there are no known or pending claims or incidents which have resulted in the establishment of a reserve or otherwise have reduced the amount of coverage potentially available to the Owner under the policy and that available coverage has not been reduced because of revised limits or payments made (or, in the event such representations cannot be given, Design-Builder, its Subcontractors, and its Lower Tier Entities must furnish the particulars thereof to the Owner.
- 13.3 If any of the foregoing insurance coverages are required to remain in force after Final Completion, Design-Builder must submit an additional certificate evidencing continuation of such coverage with its application for final payment.

14. Reduction in Coverage. Design-Builder must promptly inform the Owner of any reduction of coverage resulting from revised limits, claims paid, or both and must require its Subcontractors and Lower Tier Entities to promptly inform Design-Builder of same. The Owner has the right to require Design-Builder or the applicable Subcontractor to obtain supplemental or replacement coverage to offset such reduced coverage, at the sole cost or expense of Design-Builder or the applicable Subcontractor.

15. Suppliers and Materialmen Coverages

- 15.1 Design-Builder will endeavor to cause all suppliers and materialmen to deliver any equipment, machinery or other goods FOB Site.
- 15.2 With respect to any equipment, machinery or other goods for which the Owner or Design-Builder has paid a deposit, Design-Builder will cause the respective suppliers and materialmen to maintain personal property insurance in an amount equal to the value of such equipment, machinery or other goods (but in no event less than the amount of the applicable deposit) during fabrication, storage and transit, naming the Owner and Design-Builder as loss payee as their interests appear.

16. Condition Precedent to Starting Work

- 16.1 Prior to, and as a condition of its right to begin performing any Work on the Site, Design-Builder and each Subcontractor and Lower Tier Entities must deliver to the Owner certificates of insurance representing that the required insurance is in force, together with the additional insured endorsements and waivers of subrogation required above, and such other proof satisfactory to the Owner that the required insurance is in place; together with the original of each bond required under this Agreement. Design-Builder and each Subcontractor and Lower Tier Entities hereby authorize the Owner to communicate directly

with the respective insurance agents, brokers and/or carriers and sureties to verify their insurance and bond coverage;

- 16.2 The Owner is under no obligation or duty to make any such inquiry and the Owner is entitled to rely on any proofs of insurance tendered by Design-Builder or its Subcontractors and Lower Tier Entities. The Owner's acceptance of any proof of insurance and bonds offered by Design-Builder or any Subcontractor or Lower Tier Entities will not be deemed a waiver of the obligations of Design-Builder and Subcontractors and Lower Tier Entities to furnish the insurance and bonds required by this Exhibit.

17. **Additional Proofs of Insurance.** Design-Builder must, within 10 days after request, provide the Owner with certified copies of all policies and endorsements obtained in compliance with this Agreement.

18. **Indemnity.** The fact that Design-Builder and its Subcontractors are required by this Agreement to purchase and maintain insurance in no way limits or restricts any other obligations or duties Design-Builder and its Subcontractors and Lower Tier Entities may have to indemnify, defend or hold harmless the Owner and the other Additional Insureds from and against any and all demands, liabilities, losses or expenses of whatever kind or nature.

19. **Interpretation.** In the event of any inconsistency between the provisions of this Exhibit and those of the other provisions of the Agreement, the terms of this Exhibit will govern.

20. **Performance Bond and Payment Bond.**

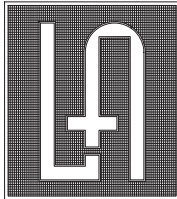
- 20.1 The Design-Builder shall provide surety bonds as follows:

Type	Penal Sum (\$0.00)
Performance Bond	100% of Contract Sum
Labor and Material Payment Bond	100% of Contract Sum

- 20.2 Bonds shall be issued by a surety licensed in the State of Tennessee and satisfactory to the Owner.
- 20.3 The Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within ten (10) days of execution of the Agreement, the Owner, in its sole discretion, may elect to terminate the Agreement and award the Project to an alternate contractor.
- 20.4 The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders that individually or cumulatively exceed 10% of the original Contract Sum. The Contractor shall furnish to the Owner and keep in force during the term of the Contract, performance and labor and material payment bonds guaranteeing that the Contractor will perform its obligations under the Contract and will pay for all labor and materials furnished for the Work.
- 20.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

EXHIBIT B

architecture | planning | interiors | design



LOWEN+ASSOCIATES, LLC

2700 Belmont Boulevard, Suite A
Nashville, Tennessee 37212
www.Lowen-Associates.com
p (615) 386-3357 f (615) 386-3329

PROFESSIONAL SEAL:



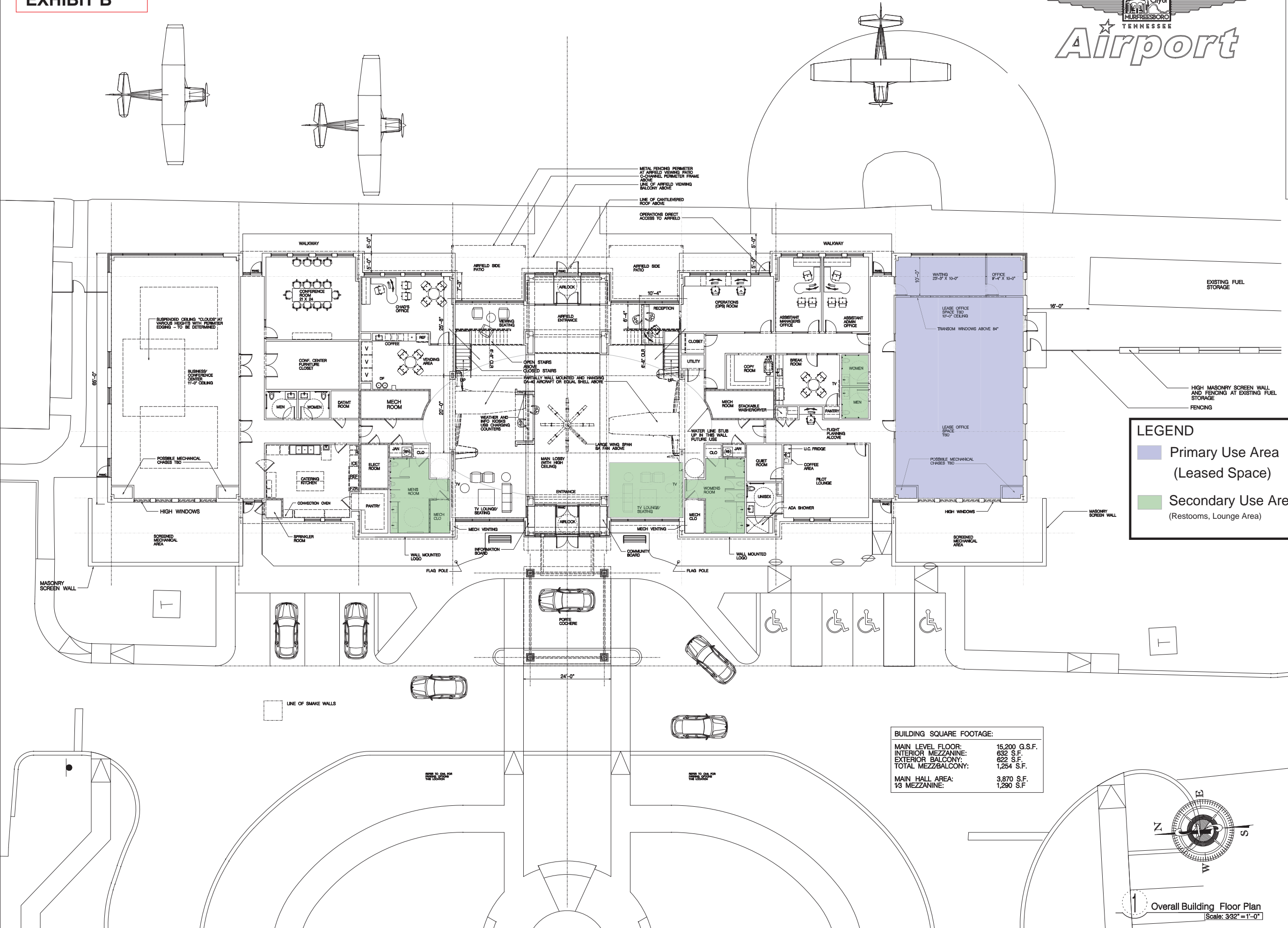
MURFREESBORO MUNICIPAL AIRPORT

NEW AVIATION TERMINAL BUILDING FOR:

1930 MEMORIAL BOULEVARD
MURFREESBORO, TN
(615) 848-3254
CLIENT: CHAD GEHRKE, MGR. MMA AND CITY OF MURFREESBORO

PHASE:
Design Development
PROJECT NUMBER:
18-16
ISSUE DATE:
January 16, 2019
REVISIONS:
Overall Building Floor Plan

A2.1



COUNCIL COMMUNICATION

Meeting Date:

Item Title: R-19-05 Detailed Bond Resolution
Department: Budget
Presented by: Erin Tucker, Budget Director

Summary

Detailed resolution authorizing the incurrence of General Obligation indebtedness of \$58 million (Resolution 19-R-05) with SunTrust Bank as the lender.

Staff Recommendation

Approve Resolution 19-R-05

Background Information

At the January 31, 2019 City Council meeting, Council approved Resolution 19-R-04 authorizing the incurrence of General Obligation indebtedness of \$58 million. The projects related to this issue are detailed in the attached Resolution. On behalf of the City, Cumberland Securities issued a Request for Proposals from various financial institutions related to this debt issuance. A total of nine banks/firms responded. Cumberland Securities received and evaluated the proposals. SunTrust Bank offered the most advantageous option with a 15-year, fixed rate of 2.84% and a 10-year call provision.

Council Priorities Served

Strong and Sustainable Financial and Economic Health

Excellent Services with a Focus on Customer Service

The funds borrowed will allow the City to fund necessary capital projects and continue to provide quality service and infrastructure to the citizens.

Fiscal Impact

The FY 2019 Operating Budget includes sufficient funds to pay interest costs for this issuance. The FY 2020 Operating Budget will include the annual debt service payment for this debt issuance.

Attachments

1. Resolution 19-R-05
2. SunTrust Loan Agreement
3. SunTrust Loan terms
4. Debt Service and Estimated Cost Summary
5. Summary of RFP Responses

RESOLUTION NO. 19-R-05

A RESOLUTION AUTHORIZING ONE OR MORE LOANS UNDER ONE OR MORE LOAN AGREEMENTS BETWEEN THE CITY OF MURFREESBORO, TENNESSEE AND A PUBLIC BUILDING AUTHORITY IN TENNESSEE IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$58,000,000 TO FINANCE CERTAIN PUBLIC WORKS PROJECTS, AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE LOAN AGREEMENTS AND OTHER DOCUMENTS RELATING TO SAID BORROWING; PROVIDING FOR THE APPLICATION OF THE PROCEEDS OF SAID BORROWINGS AND THE PAYMENT OF THE MUNICIPALITY'S OBLIGATIONS UNDER THE LOAN AGREEMENT; AND CONSENTING TO THE ASSIGNMENT OF THE MUNICIPALITY'S OBLIGATIONS UNDER THE LOAN AGREEMENT.

WHEREAS, municipalities in the State of Tennessee are authorized to finance and refinance certain public works projects by the issuance of bonds, notes or other obligations; and

WHEREAS, the City of Murfreesboro, Tennessee (the "Municipality") has determined that it is now able and it is in the best interest of the Municipality to finance certain public works projects, through a program known as the Tennessee Local Government Alternative Loan Program (TN-LOANSSM), through the issuance by a Public Building Authority in Tennessee organized and created pursuant to Sections 12-10-101, et seq., Tennessee Code Annotated, including, but not limited to, the Public Building Authority of Sevier County, Tennessee (the "Authority") of its Local Government Public Improvement Bonds (the "Bonds") in one or more series in the aggregate principal amount of not to exceed \$58,000,000, and loan the proceeds thereof to the Municipality pursuant to one or more loan agreements between the Authority and the Municipality (the "Loan Agreement") to finance certain public works projects of the Municipality and to pay costs of issuance related thereto; and

WHEREAS, the Bonds and the Loan Agreement shall be sold to STI Institutional & Government, Inc. (the "Purchaser"), or an affiliate thereof, in the Fixed Rate Period (the "Fixed Rate Period") described in the Indenture (as hereinafter defined), and in connection therewith, the Municipality will enter into a Credit Agreement with the Purchaser, which will contain terms and conditions substantially consistent with the term sheet from the Purchaser now before this meeting (the "SunTrust Term Sheet") and attached hereto as Exhibit A; and

WHEREAS, the Municipality shall pledge a tax authorized by Section 12-10-115, Tennessee Code Annotated, as amended, to be levied annually to the repayment of the amounts due under the Loan Agreement authorized herein; and

WHEREAS, the Bonds are to be secured by and contain such terms and provisions as are set forth in a related Indenture of Trust (the “Master Indenture”), as supplemented by a Supplemental Indenture of Trust authorizing the Bonds (the “Supplemental Indenture,” and together with the Master Indenture, the “Indenture”) entered into between the Authority and Regions Bank or such other trustee designated by the Authority, which shall contain terms and provisions substantially consistent with the SunTrust Term Sheet presented to the City Council of the Municipality (the “Governing Body”); and

WHEREAS, for the purposes of authorizing the loan from the Authority, the execution and delivery of the Loan Agreement and Credit Agreement by the Municipality, the pledging of the Municipality’s full faith and credit for the payment of its obligations under the Loan Agreement, approving the assignment of such pledge pursuant to the Indenture, and authorizing the execution of such documents and certificates as shall be necessary to consummate the sale and delivery of the Bonds, the Governing Body adopts this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Murfreesboro, Tennessee, as follows:

SECTION 1. APPROVAL OF LOANS FOR PROJECTS.

(a) For the purpose of providing funds to finance (i) all or a portion of the costs of certain public works projects, consisting of the acquisition of land for and the construction, improvement, acquisition, extension, and renovation of the following: (1) public lands, buildings and facilities and related equipment; (2) school facilities and related equipment; (3) airport terminal, facilities, and related equipment; (4) fire and rescue buildings, vehicles, and related equipment; (5) public safety training center and police facilities, vehicles and related equipment; (6) parks and recreation buildings, facilities and related equipment; (7) solid waste equipment; (8) streets, roads, bridges, plazas, sidewalks, lighting, drainage, streetscapes and signage and related department vehicles and equipment; (9)

transit center; (10) tangible assets for economic development by the Municipality or in conjunction with the Industrial Development Board of Rutherford County; and (11) communication and technology improvements related to or in connection with the foregoing public works projects; (ii) acquisition, construction and improvement of all other property, real and personal, appurtenant thereto or connected therewith, including all utilities, infrastructure and vehicles related to the foregoing public works projects; (iii) all legal, fiscal, administrative, architectural, and engineering costs incident thereto (collectively, the "Projects"); (iv) reimbursement, if any, for prior expenditures for any and all of the foregoing; and (v) costs incident to the issuance and sale of the Bonds and the Loan Agreement, and making and receiving the loans herein authorized, there is hereby authorized one or more loans (each, a "Loan") from the Authority in an aggregate principal amount not to exceed \$58,000,000.

(b) The Loan and the Bonds issued by the Authority to fund the Loan Agreement will bear interest at a rate or rates not to exceed the maximum rate permitted by applicable law and upon terms consistent with the provisions of the SunTrust Term Sheet. As provided in the SunTrust Term Sheet, the interest rate or rates may be subject to increase in certain situations, such as an event of default by the Municipality under the Loan Agreement or the Credit Agreement.

(c) The Loan and the Bonds will be payable as to principal commencing not later than June 1, 2020, with a final maturity not later than June 1, 2034. The Bonds will be subject to redemption as provided in the Indenture.

SECTION 2. APPROVAL OF LOAN AGREEMENT. The form, terms and provisions of the Loan Agreement, which has been presented at this meeting and attached hereto as Exhibit B, are hereby approved, and the Mayor and City Recorder are hereby authorized, empowered and directed to execute and deliver the Loan Agreement in the name and on behalf of the Municipality. The Loan Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Mayor, City Attorney, and the City Recorder, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein. From and after the execution and delivery of the Loan

Agreement, the Mayor and City Recorder are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed.

SECTION 3. APPROVAL OF CREDIT AGREEMENT. The form, terms and provisions of the Credit Agreement shall be substantially consistent with the SunTrust Term Sheet now before this meeting, with such changes therein as shall be approved by the Mayor, City Attorney, and City Recorder, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein. The Mayor and City Recorder are hereby authorized, empowered and directed to execute and deliver the Credit Agreement in the name and on behalf of the Municipality with terms and provisions consistent with the SunTrust Term Sheet. From and after the execution and delivery of the Credit Agreement, the Mayor and City Recorder are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Credit Agreement as executed.

SECTION 4. PLEDGE OF TAXES. The Municipality hereby covenants and agrees, through the Governing Body, to annually levy and collect a tax upon all taxable property within the Municipality, in addition to all other taxes authorized by law, sufficient to pay when due the amounts payable by the Municipality under the Loan Agreement as and when they become due and payable and to pay any expenses of maintaining and operating the Projects required to be paid by the Municipality under the terms of the Loan Agreement and, for such purposes, the Municipality hereby pledges such tax and the full faith and credit of the Municipality to such payments, provided, however, that the tax hereinabove described will not be required to be levied or, if levied, may be proportionately reduced to the extent of funds appropriated by the Governing Body to the payment of the amounts described above from other revenues of the Municipality. Such tax, to the extent levied, shall be assessed, levied, collected and paid in like manner as other taxes of the Municipality. Such tax shall not be included within any statutory or other limitation of rate or amount for the Municipality but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the

prohibitions, restrictions or requirements of any other law, whether public or private. Any amounts payable under the Loan Agreement falling due at any time when there are insufficient funds from the tax levy on hand shall be paid from current funds of the Municipality.

SECTION 5. APPROVAL OF BONDS. For the purpose of providing funds to make the Loan to the Municipality, as provided herein and in the Loan Agreement, and to pay legal, fiscal, and administrative costs incident thereto including costs incident to the issuance and sale of the Bonds related to a Loan Agreement, the issuance and sale of the Bonds by the Authority in connection with a Loan Agreement is hereby approved and allocation of such Bonds to the Municipality for purposes of Section 265 of the Code is hereby accepted.

SECTION 6. DISPOSITION OF PROCEEDS.

(a) An amount necessary to pay costs of issuance of the Loan Agreement and related Bonds shall be deposited to the Cost of Issuance Fund of the Municipality created under the Indenture.

(b) All remaining proceeds shall be deposited to the Loan Fund of the Municipality established under the Indenture and used to finance the Costs of the Projects as described herein and in the Loan Agreement.

SECTION 7. CONSENT TO ASSIGNMENT. The Municipality hereby consents to the assignment pursuant to the Indenture of all the Authority's right, title and interest under the Loan Agreement as security for the Bonds to which such Loan Agreement relates.

SECTION 8. ADDITIONAL AUTHORIZATIONS. All acts and doings of the Mayor and the City Recorder and any other representative or officer of the Municipality which are in conformity with the purposes and intent of this Resolution and in furtherance of the issuance and sale of the Bonds and the execution and delivery of the Loan Agreement and the Credit Agreement as set forth herein shall be and the same hereby are in all respects, approved and confirmed.

SECTION 9. COMPLIANCE WITH DEBT MANAGEMENT POLICIES; ESTIMATES OF DEBT SERVICE AND COSTS. As required by the State Funding Board of the State of Tennessee, the Municipality has heretofore adopted its debt management policy by resolution. The Governing Body hereby finds that the Loan from the Authority,

as proposed herein, is “debt” as contemplated in its debt management policy and is authorized under and in compliance with the Municipality’s debt management policy. The estimated debt service and issuance costs for the Loan Agreement and the Bonds and a description of the ongoing costs associated with the Loan Agreement have been presented to the Governing Body in an open meeting and are attached hereto as Exhibit C.

SECTION 10. CERTAIN RELATIONSHIPS. The President of Cumberland Securities Company, Inc., the municipal advisor to the Municipality, is also the President of TN-LOANS Program Administrators, Inc., which serves as the Program Administrator for the Authority’s TN-LOANS Program. The Mayor is hereby authorized to enter into a contract with Cumberland Securities Company, Inc. to serve as municipal advisor to the Municipality and with TN-LOANS Program Administrators, Inc. to serve as the Program Administrator in connection with the Municipality’s loan and to waive any conflicts of interest that may arise. The City Attorney is hereby authorized to enter into a contract with Bass, Berry & Sims PLC to serve as bond counsel in connection with the Loan Agreement and the Bonds and to waive any conflicts of interest that may arise in connection with Bass, Berry & Sims’ representation of the Purchaser or its affiliates in transactions unrelated to the Municipality and the Loan Agreement.

SECTION 11. MULTIPLE BORROWINGS. The Loan and the Loan Agreement authorized herein and the Bonds approved herein may be executed and delivered in combination with other Loans, Loan Agreements and Bonds hereafter authorized by the Municipality through the TN-LOANS Program.

SECTION 12. SEPARABILITY. If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 13. REPEAL OF CONFLICTING RESOLUTIONS AND EFFECTIVE DATE. All other resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are, to the extent of such conflict, hereby repealed and this Resolution shall be in immediate effect from and after its adoption.

Passed: _____

Shane McFarland, Mayor

ATTEST:

APPROVED AS TO FORM:

Melissa B. Wright
City Recorder

Adam F. Tucker
City Attorney

EXHIBIT A

SunTrust Term Sheet

EXHIBIT B

Form of Loan Agreement

EXHIBIT C
Estimated Costs

STATE OF TENNESSEE)
COUNTY OF RUTHERFORD)

I, the undersigned, Melissa B. Wright, do hereby certify that I am the duly appointed City Recorder of the City of Murfreesboro, Rutherford County, Tennessee, and as such official I further certify that attached hereto is a true and correct copy of RESOLUTION 19-R-05 adopted by the City Council of said City at its meeting held on _____, 2019.

IN WITNESS WHEREOF, I have hereunto subscribed by official signature and affixed the Corporate Seal of said City this ____ day of _____ 2019.

MELISSA B. WRIGHT
CITY RECORDER

26102672.2

\$58,000,000

SERIES 2019 LOAN AGREEMENT

DATED AS OF _____, 2019

BETWEEN

THE PUBLIC BUILDING AUTHORITY
OF SEVIER COUNTY, TENNESSEE

AND

CITY OF MURFREESBORO, TENNESSEE

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LOAN AGREEMENT

This Loan Agreement is made and entered into as of _____, 2019, by and between THE PUBLIC BUILDING AUTHORITY OF SEVIER COUNTY, TENNESSEE (the “Authority”), and the CITY OF MURFREESBORO, TENNESSEE (the “Borrower”).

W I T N E S S E T H:

WHEREAS, the Authority is a public nonprofit corporation and a public instrumentality of Sevier County, Tennessee (the “Authority”), organized and existing pursuant to Chapter 10, Title 12, Tennessee Code Annotated (the “Act”), to finance or refinance any project or projects eligible to be financed by bonds, notes, interim certificates or other obligations authorized to be issued by an incorporated city or town, county, metropolitan government, school district or other municipal governmental body or political subdivision in the State of Tennessee and any agency, authority, corporation or instrumentality thereof; and

WHEREAS, it has heretofore been determined by the governing body of the Borrower to be in the best interest of the Borrower to finance (a) all or a portion of the costs of certain public works projects, consisting of the acquisition of land for and the construction, improvement, acquisition, extension, and renovation of the following: (1) public lands, buildings and facilities and related equipment, (2) school facilities and related equipment, (3) airport terminal, facilities, and related equipment, (4) fire and rescue buildings, vehicles, and related equipment, (5) public safety training center and police facilities, vehicles and related equipment, (6) parks and recreation buildings, facilities and related equipment, (7) solid waste equipment, (8) streets, roads, bridges, plazas, sidewalks, lighting, drainage, streetscapes and signage and related department vehicles and equipment, (9) transit center, (10) tangible assets for economic development by the Municipality or in conjunction with the Industrial Development Board of Rutherford County and (11) communication and technology improvements related to or in connection with the foregoing public works projects; (b) acquisition, construction and improvement of all other property, real and personal, appurtenant thereto or connected therewith, including all utilities, infrastructure and vehicles related to the foregoing public works projects; (c) all legal, fiscal, administrative, architectural, and engineering costs incident thereto (collectively, the “Projects”); (d) reimbursement, if any, for prior expenditures for any and all of the foregoing; and (e) payment of costs of issuance and sale of the Series 2019 Bonds (as defined below) and this Agreement; and

WHEREAS, under Tennessee law, the Borrower is authorized to issue its bonds, notes, interim certificates or other obligations to finance the Projects; and

WHEREAS, the Borrower has determined that it is necessary and desirable to borrow sufficient funds to accomplish the purposes set forth above; and

WHEREAS, the Authority has determined to lend money to the Borrower for the purposes set forth above on the terms and conditions set forth herein; and

WHEREAS, to obtain funds for such purposes the Authority will issue and sell its Local Government Public Improvement Bonds, Series 2019 (the "Series 2019 Bonds"), to be secured by and to contain such terms and provisions as are set forth in that certain Indenture of Trust dated as of August 1, 2008, as supplemented by Series 2019 First Supplemental Indenture of Trust, dated as of _____, 2019 (the "Indenture"), between the Authority and Regions Bank, an Alabama banking corporation, Nashville, Tennessee, as trustee (the "Trustee"), and deposit the proceeds from the sale of the Series 2019 Bonds with the Trustee to be disbursed in the manner and for the purposes set forth in the Indenture, all as more fully provided therein.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the Authority and the Borrower agree as follows:

ARTICLE I. Definitions

Section 1.01 Defined Terms. In addition to the words, terms and phrases elsewhere defined in this Agreement or the Indenture, the following words, terms and phrases as used in this Agreement shall have the following respective meanings:

"Additional Payments" means the payments required to be made by the Borrower pursuant to Section 3.02 hereof.

"Administrator" means TN-LOANS Program Administrators, Inc., Knoxville, Tennessee, or any successor appointed by the Authority and serving in the capacity as Administrator under the Program Administration Agreement.

"Agreement" means this Loan Agreement as it now exists and as it may hereafter be amended.

"Authorized Borrower Representative" means the Mayor and City Recorder of the Borrower, and any such others from time to time authorized to act in behalf of the Borrower pursuant to the Charter, or ordinance or resolution of the governing body of such Borrower, a copy of which is filed with the Trustee, to perform such act or execute such document on behalf of the Borrower pursuant to a certificate signed by any of the above and giving the name and specimen signature of the person or persons so designated.

"Bond Fund" means the fund established under Section 6.02 of the Indenture.

"Borrower" means the City of Murfreesboro, Tennessee.

"Borrower Account" means the account in the Loan Fund designated for the Borrower pursuant to Section 6.03 of the Indenture in which the proceeds of the Loan are deposited.

"Code" means the Internal Revenue Code of 1986, as amended, as it applies to the Series 2019 Bonds, including applicable regulations and revenue rulings thereunder. Reference herein to sections of the Code are to the sections thereof as they exist on the date of execution of this Agreement, but include any successor provisions thereof to the extent applicable to the Series 2019 Bonds.

"Cost" or "Cost of the Projects" means:

(a) The cost of acquiring, erecting, extending, improving, equipping, repairing or refinancing the Projects, including refunding outstanding obligations of the Borrower and of the Authority or of any other public building authority created under the Act, or any combination of such purposes, demolishing structures on the Project sites, and acquiring sites or estates therein and easements necessary or convenient for the Projects;

(b) The cost of labor, materials, machinery and equipment as payable to contractors, builders and materialmen in connection with the Projects;

(c) Governmental charges levied or assessed during equipping of the Projects or upon any property acquired therefor, and premiums on insurance in connection with the Projects during construction;

(d) Fees and expenses of architects and engineers for estimates, surveys and other preliminary investigations, environmental tests, soil borings, appraisals, preparation of plans, drawings and specifications and supervision of the Projects properly chargeable to the Projects, as well as for the performance of all other duties of architects and engineers in relation to the construction and installation of the Projects;

(e) Expenses of administration, supervision and inspection properly chargeable to the Projects, including the fees of the Borrower relating to the design, construction and equipping of the Projects and all other items of expense, not elsewhere specified herein incident to the construction, installation and placing in operation of the Projects;

(f) Fees and expenses incurred in connection with the issuance and administration of the Series 2019 Bonds and this Loan Agreement, including but not limited to, fees and expenses of the Purchaser and its counsel, the Credit Provider, if any, and its counsel, the Authority and its counsel, Bond Counsel, the Trustee and its counsel, the Borrower's counsel, the Swap Counterparty, if any, and its counsel;

(g) Interest on the Series 2019 Bonds during the construction and installation of the Projects and for up to six (6) months thereafter, if applicable; and

(h) Any other cost of the Projects permitted to be financed pursuant to the Act.

"Event of Default" means any event defined in Section 5.01 hereof.

"Final Computation Date" means the date the last Series 2019 Bond is paid in full.

"Fixed Rate" shall have the meaning given to such term in the Indenture.

"Fixed Rate Credit Agreement" means the Credit Agreement dated as of _____, 2019, between the Borrower and the Purchaser.

“Fixed Rate Period” shall have the meaning given to such term in the Indenture.

“Governing Body” means the City Council of the Borrower.

“Indenture” means the Indenture of Trust, dated as of August 1, 2008, as supplemented by the Series 2019 First Supplemental Indenture of Trust, dated as of _____, 2019, as from time to time further supplemented and amended, by and between the Authority and the Trustee.

“Installment Computation Date” means the fifth (5th) anniversary of the issue date of the Series 2019 Bonds and each fifth (5th) anniversary of such date.

“Loan” means the loan described in Section 2.02 hereof.

“Loan Repayment Date” means,

(a) with respect to that portion of the Loan Repayments attributable to interest on the Series 2019 Bonds, (i) while the Series 2019 Bonds are in the Fixed Rate Period, the [25th] day of each [_____ and _____], commencing [_____ 25], 2019 and five days prior to any Redemption Date and the Maturity Date, (ii) while the Series 2019 Bonds are in the Commercial Paper Period, the first day after the end of any Calculation Period, five days prior to any Conversion Date, the maturity date, and any Credit Facility Termination Date, (iii) while the Series 2019 Bonds are in the Daily Period or the Weekly Period, the [25th] day of each [_____, _____, _____ and _____] during the term hereof and five days prior to any Redemption Date, the maturity date, and any Credit Facility Termination Date, (iv) while the Series 2019 Bonds are in the Long Term Period, the [25th] day of each [_____ and _____], and five days prior to any Redemption Date and the maturity date, and (v) with respect to any unpaid interest on the Series 2019 Bonds, any Interest Payment Date;

(b) with respect to that portion of Loan Repayments attributable to principal on the Series 2019 Bonds, on the [25th] day of _____, 2020 and continuing each _____ 25 thereafter through _____ 25, 2034], inclusive; and five days prior to any Redemption Date and any Credit Facility Termination Date and on the termination date of any Credit Facility;

(c) with respect to that portion of the Loan Repayments consisting of the Purchase Price of any Series 2019 Bond on any Tender Date or Mandatory Purchase Date that is not paid from the proceeds of remarketing of such Series 2019 Bonds pursuant to Section 2.08A or Section 4.03(a) of the Indenture or, during any Credit Facility Period, from drawings on the Series 2019 Credit Facility pursuant to Section 4.03(b) of the Indenture, on the Business Day before any related Tender Date or Mandatory Purchase Date;

(d) with respect to that portion of Loan Repayments consisting of Reimbursement Payments, on each date such Reimbursement Payments are due under any Credit Agreement;

(e) with respect to that portion of Loan Repayments consisting of Additional Payments, other than certain payments under any Credit Facility and any Credit

Agreement, if any, Rebate Amounts, if any, Loan Swap Payments, if any, and Loan Termination Payments, if any, the [25th] day of [_____, _____, _____ and _____] of each year; and

(f) any amount determined to be an increased cost under any Credit Facility and any Credit Agreement and any other amounts due under any Credit Facility and any Credit Agreement, and any Rebate Amount shall be payable on demand.

“Maturity” means the earliest of (i) June 1, 2034 and (ii) the date on which the principal of such Series 2019 Bonds otherwise becomes due and payable.

“Optional Prepayment Price” means the amount determined pursuant to the provisions of Section 6.02 hereof payable by the Borrower in order to prepay in whole or in part its Loan Repayments

“Outstanding Loan Amount” means the original principal amount of the Loan authorized under this Agreement, less repayments of such principal amount.

“Prepayment Date” means the date on which the Borrower is required to deposit the Optional Prepayment Price with the Trustee pursuant to Section 6.05 hereof, which day may be any Business Day.

“Projects” has the meaning given to such term in the recitals hereof.

“Proportionate Share” means, for purposes of common fees and expenses described in Section 3.02 hereof relating to all Series of Bonds Outstanding under the Indenture, a fraction, the numerator of which shall be the Outstanding principal amount of the Series 2019 Bonds and the denominator of which shall be the Outstanding principal amount of all Series of Bonds Outstanding under the Indenture; for purposes of common fees and expenses described in Section 3.02 hereof, which are determined by the Administrator to be common to particular Series of Bonds under the Indenture, including the Series 2019 Bonds, but not to all Series of Bonds under the Indenture, means a fraction, the numerator of which shall be the Outstanding principal amount of the Series 2019 Bonds to which the common fees and expenses apply and the denominator of which shall be the principal amount of all Series of Bonds Outstanding under the Indenture to which the common fees and expenses apply.

“Purchaser” means STI Institutional & Government, Inc., as the initial purchaser of the Series 2019 Bonds in the Fixed Rate Period, and any successors or assigns thereof.

“Rebate Amount” means 100% of the amount owed to the United States under Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations issued thereunder with respect to the Series 2019 Bonds.

“Rebate Analyst” means an independent, certified public accountant, accountant, financial analyst, Bond Counsel, or any firm of the foregoing, or any financial institution which is experienced in making the rebate calculations required to be made for the purposes of Section 3.08, and which in each case is retained by the Administrator to make such calculations.

“Series 2019 Bond Account” means the Series 2019 Bond Accounts of the Bond Fund and Cost of Issuance Fund for the Series 2019 Bonds established in the Indenture.

“Series 2019 Bonds” means the Authority's Local Government Public Improvement Bonds, Series 2019 issued pursuant to the Indenture.

“Series 2019 Closing Date” means the date of issuance and delivery of the Series 2019 Bonds which shall be the Issue Date of this Agreement.

“Trustee” means Regions Bank, an Alabama banking corporation, Nashville, Tennessee, and any successor trustee under the Indenture, acting as paying agent, bond registrar, tender agent, and trustee.

Section 1.02 Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. The words “Bond”, “holder”, and “person” shall include the plural as well as the singular number unless the context shall otherwise indicate. The word “person” shall include corporations, associations, natural persons and public bodies unless the context shall otherwise indicate.

Any certificate or opinion made or given by an Authorized Authority Representative or a Authorized Borrower Representative may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless such officer knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous. Any certificate or opinion made or given by counsel may be based (insofar as it relates to factual matters, information with respect to which is in the possession of the Authority or a Borrower), upon the certificate or opinion of or representations by an officer or officers or officials of the Authority or the Borrower, unless such counsel knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

ARTICLE II. The Series 2019 Bonds

Section 2.01 Issuance of the Series 2019 Bonds.

(a) For the purpose of obtaining funds to lend to the Borrower to finance the Costs of the Project and pay costs of issuance in connection with the Series 2019 Bonds and the Agreement as provided in Section 2.02 hereof, the Authority agrees to issue and deliver its Series 2019 Bonds. The Series 2019 Bonds shall initially bear interest at the Fixed Rate determined as provided in Section 2.08A of the Indenture. The Authority will cause the proceeds received from the sale of the Series 2019 Bonds to be deposited with the Trustee in the Borrower Account of the Loan Fund pursuant to Section 6.03 of the Indenture, to the Series 2019 Bond Account of the Cost of Issuance Account pursuant to Section 6.05 of the Indenture and prepaid fees to the Additional Payments Subaccount of the General Account of the Series 2019 Bond Account of the Bond Fund. Disbursement of funds upon initial requisition by the Borrower from the Series

2019 Bond Account of the Cost of Issuance Fund for the payment of costs of issuance of the Series 2019 Bonds and costs related to this Agreement are hereby approved.

(b) The liability of the Authority under the Series 2019 Bonds shall be enforceable only to the extent of its rights under this Agreement or any amendment or supplement hereto. The Series 2019 Bonds and all other payments due under the Indenture shall be payable solely from payments made by or on behalf of the Borrower to the Trustee pursuant to the terms of this Agreement.

Section 2.02 Loan. Upon the sale and delivery of the Series 2019 Bonds, deposit of the proceeds thereof to the appropriate Accounts as above provided, and receipt by the Trustee and the Administrator of the submissions required upon the issuance of the Series 2019 Bonds under Section 2.02(c) of the Indenture and receipt by the Trustee, with respect to each disbursement of Loan Funds, of a requisition for funds conforming to the requirements of Section 2.04 hereof, the proceeds of the Series 2019 Bonds will be loaned to the Borrower in the amount of \$58,000,000 in the manner hereinafter set forth. Proceeds of the Series 2019 Bonds deposited to the Borrower Account of the Loan Fund and any other funds so deposited shall be and remain funds of the Authority for so long as they are in the Loan Fund and shall become funds of the Borrower only upon disbursement to the Borrower in accordance with the terms hereof.

Section 2.03 Use of Proceeds by the Borrower. The Borrower will use the funds loaned to it by the Authority pursuant to Section 2.02 hereof solely for the purposes set forth in Section 2.01(a).

Section 2.04 Disbursements of Loan Proceeds; Completion of Project. Pursuant to Section 6.03 of the Indenture, the Authority has authorized and directed the Trustee to use the moneys in the Borrower Account of the Loan Fund solely to pay the Costs of the Projects, including the reimbursement of the Borrower for advances and payments made or costs incurred by the Borrower for or in connection with the Projects and pay costs of issuance. The Authority shall cause funds to be disbursed by the Trustee from the Borrower Account of the Loan Fund only upon receipt by the Trustee of a requisition appropriately completed and signed by an Authorized Borrower Representative in the form attached hereto as Exhibit A. The initial requisition on the Closing Date shall be made by the Borrower and shall be in an amount sufficient to pay costs of issuance of the Series 2019 Bonds and of the execution and delivery of this Agreement. All disbursements shall be made only on the Series 2019 Closing Date and on the 1st day of the month or the first Business Day thereafter in accordance with Section 6.03 of the Indenture, or on such other date as approved by the Administrator. In making any such payment from the Borrower Account of the Loan Fund, the Trustee may rely on a requisition delivered to it pursuant to this Section, and the Trustee shall be relieved of all liability with respect to making such payments in accordance with any such requisitions without inspection of the Projects or any other investigation.

(b) Unless the request for final payment fully depletes the Borrower Account of the Loan Fund, when requesting final payment, the Borrower shall cause to be submitted to the Trustee, in addition to the requisition required by Section 2.04(a) hereof, a certificate signed by an Authorized Borrower Representative in the form attached hereto as Exhibit B. Said

certificate shall state that no further funds will be withdrawn from the Borrower Account of the Loan Fund to pay the Cost of the Projects. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The final payment from the Borrower Account within the Loan Fund shall be made no later than three years from the Closing Date of the Loan unless the Borrower delivers to the Trustee an Opinion of Bond Counsel that the disbursement of funds from such Borrower Account more than three years from the Closing Date will not adversely affect the exclusion from gross income of interest on the Series 2019 Bonds for federal income tax purposes, if applicable. The balance of any moneys remaining in the Borrower Account upon completion of the Projects or which remain after three years from the Closing Date for which no Opinion of Bond Counsel has been delivered as described above, as directed by the Administrator, shall be (i) deposited in the Principal Subaccount of the General Account of the Series Bond Account in the Bond Fund and applied by the Trustee to the redemption of the Series 2019 Bonds on the first Redemption Date occurring after such completion, and/or (ii) deposited in the Interest Subaccount of the General Account of the Series Bond Account, for payment of interest on the next Interest Payment Date for the applicable Series 2019 Bonds. The Authority does not make any warranty, either express or implied, that the moneys which will be paid into the Borrower Account of the Loan Fund and which, under the provisions of this Agreement, will be available for payment of the Cost of the Projects, will be sufficient to pay all of the Cost of the Projects.

Section 2.05 Fixed Rate Credit Agreement. The Borrower hereby agrees to enter into the Fixed Rate Credit Agreement.

Section 2.06 Investment of Funds; Application of Investment Earnings. Any moneys held by the Trustee in the Borrower Account shall be invested or reinvested by the Trustee in Authorized Investments at the written direction of the Administrator. Except as otherwise set forth below, all earnings accruing on funds in the Borrower Account shall be credited by the Trustee on the [25th] day of each [_____] and [_____] , first to the Interest Subaccount of the General Account in the Series 2019 Bond Account of the Bond Fund in an amount, which when combined with all other amounts then held therein, does not exceed interest accruing on the Series 2019 Bonds on the next succeeding Interest Payment Date computed in accordance with Section 3.04 hereof and then to the Additional Payments Subaccount of the General Account in the Series 2019 Bond Account of the Bond Fund, provided the amount to be credited to said Accounts on the [25th] day of [_____] of each year shall not exceed the amount which when combined with all other amounts then held in said Accounts does not exceed the amount necessary, together with amounts on deposit in the Interest Subaccount and the Additional Payments Subaccount, to pay principal of and interest on the Series 2019 Bonds on the next Interest Payment Date, and excess earnings not so credited shall be retained in the Borrower Account and credited to the Interest Account.

At the written direction of an Authorized Borrower Representative to both the Trustee and the Administrator, all or a portion of the earnings accruing on funds in the Borrower Account shall be retained in the Loan Fund or transferred to the Cost of Issuance Fund, and to the extent so retained shall not be transferred to the Interest Account of the Series 2019 Bond Account as described above.

All income derived from the investment of moneys on deposit in the Principal Subaccount, Interest Subaccount and Additional Payments Subaccount of the Series 2019 Bond Account of the Bond Fund shall be credited to the Additional Payments Account of the Series 2019 Bond Account of the Bond Fund and applied to the payment of Additional Payments next due. To the extent amounts on deposit in the Additional Payments Account exceeds the Additional Payments next coming due, such excess amounts may be transferred to the Interest Subaccount and/or Principal Subaccount.

Section 2.07 Conversions. The Borrower shall have the option to direct a change in the type of Interest Period on the Series 2019 Bonds to another type of Interest Period upon the terms provided in the Indenture.

Section 2.08 Tax Status of the Series 2019 Bonds. It is the intention of the parties hereto that the interest on the Series 2019 Bonds be and remain excluded from gross income for federal income tax purposes, and to that end the Borrower hereby represents, warrants and agrees as follows:

(a) The Borrower shall not take or omit to take any action the taking or omission of which will cause the Series 2019 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code or otherwise cause interest on the Series 2019 Bonds to be includable in the gross income of the registered owners thereof for federal income tax purposes under the Code. Without limiting the generality of the foregoing, the Borrower, on behalf of the Authority, shall comply with any provision of the law which may require the Authority at any time to make rebate payments to the United States of any part of the earnings derived from the investment of the gross proceeds of the Series 2019 Bonds.

(b) The Borrower shall not permit the proceeds of the Series 2019 Bonds to be used in any manner that would result in (a) five percent (5%) or more of such proceeds being used in a trade or business carried on by any person other than a governmental unit as provided in Section 141(b) of the Code, (b) five percent (5%) or more of such proceeds being used with respect to any output facility within the meaning of Section 141(b)(4) of the Code, or (c) five percent (5%) or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit as provided in Section 141(c) of the Code; or (d) the payment of principal of or interest on more than ten percent (10%) of the proceeds of the Series 2019 Bonds (under the terms of the Series 2019 Bonds or any underlying arrangement) directly or indirectly (A) secured by any interest in (1) property used or to be used for private business use or (2) payments in receipt of such property or (B) derived from payments (whether or not to the Borrower) in respect of property, or borrowed money, used or to be used for a private business use, provided, however, that if the Borrower receives an opinion from nationally recognized bond counsel, acceptable to the Trustee and the Administrator on behalf of the Authority, that any such covenant need not be complied with to prevent the interest on the Series 2019 Bonds from being includable in the gross income of the registered owners thereof for federal income tax purposes under existing statutes, the Borrower need not comply with such covenants.

(c) Neither the obligations of the Borrower under this Agreement nor the Series 2019 Bonds are or will be “federally guaranteed”, as defined in Section 149(b) of the Code.

Section 2.09 Rights of the Credit Provider.

(a) While any Credit Facility is in effect, the Borrower or the Trustee, as appropriate, shall furnish to any Credit Provider or the Administrator such additional information as the Credit Provider shall reasonably request.

(b) The Trustee or the Borrower, as appropriate, shall notify the Credit Provider of any failure of the Borrower to provide relevant notices, certificates, or other information required to be provided under the Indenture or this Agreement provided that the Trustee shall be required to give notice of any such failure only if it has actual knowledge of such failure.

(c) The Borrower will permit the Credit Provider to discuss the affairs, finances and accounts of the Borrower or any information the Credit Provider or the Purchaser may reasonably request regarding the security for the Series 2019 Bonds with appropriate officers of the Borrower. The Trustee or the Borrower, as appropriate, will permit the Credit Provider to have access to the Projects and have access to and to make copies of all books and records relating to the Series 2019 Bonds at any reasonable time.

(d) Notwithstanding any other provision of this Agreement or the Indenture to the contrary, the Trustee shall immediately notify the Credit Provider on any Loan Repayment Date if there are insufficient moneys to make any payment of principal of or interest on the Series 2019 Bonds, any payments due under the Credit Agreement, or any Additional Payments when and as required by this Agreement or the Indenture or upon the occurrence of any Event of Default under the Indenture or this Agreement provided that the Trustee shall be required to give such notice only if it has actual knowledge of such Event of Default.

(e) As and to the extent that any provision of this Section 2.09 is in conflict with the Credit Agreement or the Fixed Rate Credit Agreement, the terms of the Credit Agreement or Fixed Rate Credit Agreement, respectively, will be deemed controlling.

ARTICLE III.
Payment Obligations of Borrower

Section 3.01 Loan Repayments. Notwithstanding any other provision of this Loan Agreement, the Borrower agrees to pay to the Trustee, for the account of the Authority on the dates, in the manner and in the amounts set forth in Sections 3.03 and 3.04 hereof, (i) as principal, an amount equal to the aggregate principal amount of the Series 2019 Bonds, (ii) as interest on its obligation to pay such amount, amounts equal to the interest on the Series 2019 Bonds, (iii) the Purchase Price of Series 2019 Bonds not paid with the proceeds of the remarketing of the Series 2019 Bonds or pursuant to a drawing or drawings under any Credit Facility on any Mandatory Purchase Date or Tender Date, (iv) any payment due under the Fixed Rate Credit Agreement; (v) Reimbursement Payments due under any Credit Facility; (vi) amounts equal to the Swap Payments due from time to time under the Swap Agreement, if any; and (vii) all Additional Payments, when due.

Section 3.02 Additional Payments. The Borrower agrees to pay to the Trustee on the dates, in the manner and in the amounts set forth in Sections 3.03 and 3.04 hereof, if and to the extent applicable, the following Additional Payments (except that the payee of any such payment related to the making of the Loan may require payment on the Series 2019 Closing Date of the Loan and provided that each reference to expenses set forth below shall include reasonable attorney fees and expenses):

(a) The fees and expenses of and other amounts payable, if any, to any Purchaser under a Fixed Rate Credit Agreement not provided for in Section 3.01 hereof.

(b) The fees and expenses of and other amounts payable to a Credit Provider not provided for in Section 3.01 hereof, if any, under any Credit Facility and Credit Agreement relating to the Series 2019 Bonds.

(c) The fees and expenses of any Remarketing Agent under any Remarketing Agreement, if applicable, relating to the Series 2019 Bonds.

(d) The fees and expenses of the Trustee under the Indenture relating to the Series 2019 Bonds, including all expenses necessary to prepare notices of redemption or purchase of Series 2019 Bonds or to cancel and discharge the Indenture with respect to the Series 2019 Bonds and the Borrower's Proportionate Share of the reasonable fees and expenses of the Trustee which are determined by the Administrator to be fees and expenses which should be shared by all Borrowers under the Indenture or particular groups of Borrowers under the Indenture.

(e) The annual fee of the Authority in the amount of one-half (1/2) basis point of the Outstanding principal amount of the Series 2019 Bonds plus any expenses of the Authority hereunder or under the Indenture relating to the Series 2019 Bonds and the Borrower's Proportionate Share of the expenses of the Authority hereunder or under the Indenture which are determined by the Administrator to be expenses which should be shared by all Borrowers under the Indenture or particular groups of Borrowers under the Indenture.

(f) The fees and expenses of the Administrator relating to the Series 2019 Bonds and the Borrower's Proportionate Share of the reasonable fees and expenses of the Administrator

which are determined by the Administrator to be fees and expenses which should be shared by all Borrowers under the Indenture or particular groups of Borrowers under the Indenture.

(g) The fees and expenses of the Bond Counsel, the Purchaser, Counsel to the Purchaser and other costs of issuance relating to the Series 2019 Bonds.

(h) Rating Agency fees, if any, relating to the Series 2019 Bonds.

(i) Any amounts required to be paid to the U.S. Government as arbitrage rebate as determined pursuant to Section 148(f) of the Code with respect to the Series 2019 Bonds, payable on demand.

(j) Any Termination Payments required to be paid by the Authority under any Swap Agreement.

(k) Any Loan Swap Payment or Loan Termination Payment required to be paid by the Borrower under any Loan Swap Agreement. Any Loan Swap Payment or Loan Termination Payment required to be paid by the Borrower shall constitute an Additional Payment whether or not such Loan Swap Payment or Loan Termination Payment is made to the Trustee.

(l) Such other reasonable fees and expenses relating to the Series 2019 Bonds.

The Additional Payments payable hereunder will be computed and, to the extent appropriate, apportioned among the various Series of Bonds by the Administrator, and submitted to the Trustee on each Closing Date for a Series of Bonds, as applicable, and each Loan Repayment Date, or otherwise when due, subject to periodic adjustment as needed. The Trustee shall not be responsible for the computation and allocation of any Additional Payments and shall be entitled to rely on the Administrator's computation and allocation unless contested in writing by the payee or Borrower prior to the applicable Loan Repayment Date.

Notwithstanding anything herein to the contrary, while the Series 2019 Bonds are in the Fixed Rate Period, Additional Payments shall not consist of any annual fees to the Authority or to the Administrator under Section 3.02(e) and (f) above (other than payment for any expenses of the Authority or Administrator related to the Borrower hereunder or under the Indenture), and the annual fee to the Trustee under Section 3.02(d) above shall not exceed \$2,000.00 (other than payment for any expenses of the Trustee related to the Borrower hereunder or under the Indenture).

Section 3.03 Time and Manner of Payment. Borrower agrees to make each of the Loan Repayments directly to the Trustee for the account of the Authority on or before each Loan Repayment Date in lawful money of the United States of America by wire transfer of immediately available funds.

Section 3.04 Amount of Payment. The amount of each of the Loan Repayments shall be computed as follows:

(a) (i) With respect to the interest portion of each Loan Repayment while the Series 2019 Bonds are in the Fixed Rate Period, the amount thereof shall be equal to the interest

on the Series 2019 Bonds at the Fixed Rate in effect from time to time pursuant to Section 2.08A of the Indenture.

(ii) Subject to the provisions of subsection (v) below, with respect to the interest portion of each Loan Repayment while the Series 2019 Bonds are in the Daily Period or the Weekly Period, the amount thereof shall be equal to the interest on the Series 2019 Bonds, as computed by the Trustee, at the Daily Rate or the Weekly Rate in effect for the applicable Loan Repayment computation period, which period shall commence on the later of the Conversion Date to the Daily Rate or the Weekly Rate, any date on which the Daily Rate or the Weekly Rate is adjusted under Section 2.05 or 2.06 of the Indenture, or the first day of the quarter in which such Loan Repayment is due to and ending on the last day of the quarter in which such Loan Repayment is due.

(iii) With respect to the interest portion of each Loan Repayment while the Series 2019 Bonds are in the Commercial Paper Period, the amount shall be equal to the interest on the Series 2019 Bonds as computed by the Trustee at the Commercial Paper Rate in effect for the Calculation Period.

(iv) With respect to the interest portion of each Loan Repayment while the Series 2019 Bonds are in the Long Term Period, the amount thereof shall be equal to the interest on the Series 2019 Bonds, as computed by the Trustee, at the Long Term Rate in effect for the applicable Loan Repayment computation period, which period shall commence on the Conversion Date to such Long Term Period, and end on the last day of such Interest Period.

(v) While the Series 2019 Bonds are in the Daily Period or the Weekly Period or in the Commercial Paper Period, Loan Repayments constituting interest shall be estimated and billed by the Trustee and paid by the Borrower commencing on each Loan Repayment Date based on the Daily Rate, the Weekly Rate or the Commercial Paper Rate in effect on the date of computation plus [150] basis points for the following Daily Period, Weekly Period or Commercial Paper Period in effect or such lesser amount as directed by the Administrator. Notwithstanding the foregoing, the Administrator, on behalf of the Authority, may direct the Trustee fifteen days prior to any Loan Repayment Date (“Interim Interest Adjustment Date”) to bill the Borrower an additional payment based on actual interest accrued on the Series 2019 Bonds from the Series 2019 Closing Date or prior Loan Repayment Date to the Interim Interest Adjustment Date. Each successive Loan Repayment will be reduced by the amount the prior Loan Repayment exceeded the actual interest due on the Series 2019 Bonds.

(b) With respect to the principal portion of each of the Loan Repayments, the amount thereof shall be equal to the next ensuing principal reduction requirement on the Loan set forth on Exhibit C attached hereto, payable on the [25th] day of [_____] in the year of each principal reduction date shown on Exhibit C.

(c) With respect to the Reimbursement Payments, the amount shall be computed in accordance with the Credit Facility.

(d) With respect to the Additional Payments portion of each of the Loan Repayments, the amount thereof shall be computed, as provided in Section 3.02 hereof, for any period

commencing on the Series 2019 Closing Date or the Business Day on which an Additional Payment was last paid to and ending on the day next preceding the Business Day on which the Additional Payment is due.

(e) If the Borrower has approved and the Authority has executed and delivered a Swap Agreement, with respect to the Series 2019 Bonds in accordance with Section 2.02(h) of the Indenture, the Loan Repayments shall include any Swap Payments to be made to the Swap Counterparty under the Swap Agreement. Any Swap Receipts received from the Swap Counterparty under the Swap Agreement shall be deposited as provided in Section 6.02 of the Indenture and applied to pay interest on the Series 2019 Bonds and otherwise as provided in the Indenture.

(f) Upon the failure of the Remarketing Agent to remarket tendered Series 2019 Bonds on any Mandatory Purchase Date or any Tender Date in accordance with Section 4.07 of the Indenture, the Series 2019 Bonds will be purchased with funds provided by the Credit Provider, if any, pursuant to the terms of the related Credit Facility, if any, and will be Pledged Bonds (as defined in the related Credit Agreement). During the period Series 2019 Bonds are Pledged Bonds they will bear interest calculated and payable as set forth in the Credit Facility (including interest at an increased rate) which will result in an increase in the amount of the Loan Repayments.

(g) If, upon the failure of the Remarketing Agent to remarket tendered Series 2019 Bonds on any Mandatory Purchase Date or Tender Date in accordance with Section 2.08A or Section 4.03 of the Indenture and either such Mandatory Purchase Date or Tender Date is not during a Credit Facility Period or the Credit Provider fails to provide the funds for such purpose under the related Credit Facility, the amount equal to the Purchase Price not paid from the proceeds of the remarketing of the Series 2019 Bonds or from drawings under the Credit Facility shall be a Loan Repayment amount.

(h) If the Borrower has executed and delivered a Loan Swap Agreement, the Borrower may make arrangements with the Trustee, satisfactory to the Trustee, (i) for the Trustee to receive Loan Swap Receipts from the Loan Swap Counterparty and apply the same to the Borrower's obligation to make Loan Repayments, and (ii) for the Trustee to receive Loan Swap Payments from the Borrower and apply the same to satisfy Borrower's obligations under the Loan Swap Agreement. The Swap Advisor must consent in writing to any Loan Swap Agreement.

(i) All payments of interest shall be reduced to the extent moneys in the Borrower Account of the Loan Fund provided for capitalized interest have been credited to the Interest Subaccount. All payments of interest shall be reduced to the extent investment earnings on the Borrower Account of the Loan Fund have been credited to the Interest Subaccount, and the Additional Payments shall be reduced to the extent of excess investment earnings on the Borrower Account of the Loan Fund not credited to the Interest Account and investment earnings on the Interest Subaccount, the Principal Subaccount and the Additional Payments Account of the General Account of the Series 2019 Bond Account of the Bond Fund which have been credited to the Additional Payments Account as provided in and subject to the limitations of Section 2.06 hereof; provided the amount of earnings accruing for credit to either of said

accounts for the period from and after the date the Trustee computes a Loan Repayment to the end of the period for which the computation is made will be computed using the interest rate on the investments as of the Adjustment Date immediately preceding the computation date as the interest rate for estimating the earnings, and will be increased by the amount by which the actual earnings during such period for the previous period exceeded the estimated amount for said period. If funds in the Borrower Account of the Loan Fund are invested in investments bearing interest at a variable rate, then the interest rate used by the Trustee for estimating the estimated amount of earnings shall be a zero rate of interest from the date earnings on such investments were last credited to the Borrower Account of the Loan Fund or at a rate provided by the Administrator.

(j) It is the intention of the Authority and the Borrower that, notwithstanding any other provision of this Agreement, the Trustee, as assignee of the Authority, shall receive funds from or on behalf of the Borrower in such amounts and at such times as, together with any Swap Receipts actually received by the Trustee under the Swap Agreement, will enable the Authority to pay when due all obligations for the payment of principal of and premium, if any, and interest on the Series 2019 Bonds, for the payment of all Swap Payments payable by the Authority under the Swap Agreement and for payment of all Additional Payments payable by the Borrower. The Borrower shall have the right, on behalf of the Authority, to enforce the payment and collection of Swap Receipts under a Swap Agreement for deposit with the Trustee. It is further intended that the earnings on the Borrower Account of the Loan Fund and the Interest Account and the Additional Payments Account of the Series 2019 Bond Account of the Bond Fund will be sufficient to pay the interest and Additional Payment components of the Loan Repayments relating to the portion of the Loan not disbursed from the Loan Fund, subject to the limitations of Section 2.06 hereof. In the event said earnings are not sufficient to make such payments, the Borrower shall pay the deficiency in the manner and at the times required herein for Loan Repayments in consideration for the agreement by the Authority to continue to make the amounts therein available to be disbursed by the Authority.

Section 3.05 Payments Assigned. It is understood and agreed that the rights of the Authority under this Agreement (other than its rights to indemnification, payment of expenses, receive notices, and rights to payment of Loan Swap Payments and Loan Swap Receipts), are assigned to the Trustee pursuant to the Indenture. The Borrower consents to such assignment, and agrees to pay to the Trustee all amounts payable by the Borrower that are so assigned. All such assigned payments shall be made directly to the Trustee and shall be deposited as provided in the Indenture.

Section 3.06 Obligation of Borrower Unconditional. The obligation of the Borrower to make payments hereunder (including Additional Payments) and to perform and observe all other covenants, conditions and agreements hereunder shall be absolute and unconditional until payment of all Borrower obligations hereunder, irrespective of any defense or any rights of setoff, recoupment or counterclaim which the Borrower might otherwise have against the Authority or the Trustee. Until payment of all Borrower obligations hereunder, the Borrower shall not suspend or discontinue any such payment hereunder or fail to observe and perform any of their other covenants, conditions and agreements hereunder for any cause, including without limitation failure of consideration, failure of title to any part or all of the Projects, or commercial frustration of purpose, or any damage to or destruction or condemnation of all or any part of the

Projects, or any change in the tax or other laws of the United States of America, the State of Tennessee or any political subdivision of either, or any failure of the Authority, the Trustee, the Administrator and the Swap Counterparty, if any, to observe and perform any covenant, condition or agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with any document in connection with the financing of the Projects. Nothing contained in this Section shall be construed to release the Authority, the Administrator, the Trustee and the Swap Counterparty, if any, from the performance of any of their respective obligations hereunder or under any documents related hereto, and in the event the Authority and the Trustee should fail to perform any such obligation the Borrower may institute such action as the Borrower may deem advisable to compel performance or recover damages for non-performance so long as such action is consistent with the preceding sentence.

Section 3.07 Pledge of Taxing Power; Payment from Additional Sources. The Borrower covenants that it shall provide for the annual levy and collection of a tax sufficient to pay when due the annual amounts payable under this Agreement, including, without limitation, the Swap Payments and the Additional Payments, as and when they become due and payable and to pay all other expenses of maintaining and operating the Projects required to be paid by the Borrower under the terms of this Agreement. The Borrower hereby pledges its full faith and credit to such payments. The tax to be levied pursuant to this Section shall be assessed, levied, collected and paid in like manner as other taxes of the Borrower. Such tax shall not be included within any statutory or other limitation of rate or amount for the Borrower but shall be excluded therefrom and be in addition thereto and in excess thereof, notwithstanding and without regard to the prohibitions, restrictions or requirements of any other law. To the extent other moneys are not available therefore, there shall be set aside by the Borrower from such tax levy in a special fund an amount sufficient for the payment of the amounts under this Agreement, and such fund shall be used exclusively for such purpose and shall not be used for any other purpose until the amounts payable hereunder have been paid in full. Notwithstanding the foregoing, the tax hereinabove described will not be required to be levied by the Borrower or, if levied, may be proportionately reduced to the extent of funds of the Borrower appropriated by the governing body of the Borrower to the payment of the amounts described above from other revenues of the Borrower. Notwithstanding the foregoing, the Borrower shall be unconditionally obligated to levy such tax and to pay, whether from the proceeds of such tax or from other funds, the amounts due hereunder.

Section 3.08 Rebate Covenants of Borrower.

(a) To the extent required, the Administrator, on behalf of the Authority, shall retain a Rebate Analyst to determine on behalf of the Borrower the Rebate Amount as of each of the dates set forth in (b) and (c) below.

(b) The Borrower shall deliver to the Trustee the determination of the Rebate Amount in writing signed by an Authorized Borrower Representative not later than fifty-eight (58) days after each Computation Date, provided, that if such fifty-eighth (58th) day after any Computation Date is not a Business Day, then not later than three (3) Business Days prior to such fifty-eighth day.

(c) Not later than fifty-eight (58) days following each Installment Computation Date, the Borrower shall deposit with the Trustee for deposit into the Series 2019 Bond Account of the Rebate Fund an amount equal to the portion of the Rebate Amount that is required to be paid to the United States with respect to such Installment Computation Date.

(d) Not later than fifty-eight (58) days following the Final Computation Date, the Borrower shall deposit with the Trustee for deposit into the Series 2019 Bond Account of the Rebate Fund an amount equal to the portion of the Rebate Amount that is required to be paid to the United States as of the Final Computation Date.

(e) The Borrower shall not make, or permit to be made, any payment, or agreement to pay, to a party other than the United States, any amount that is required to be paid to the United States by entering into a transaction that reduces the amount required to be paid pursuant to Section 148(f) of the Code because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the yield on the Series 2019 Bonds not been relevant to either party (the failure to invest, or direct investment of, moneys that could be invested shall constitute an agreement to pay that results in such a smaller profit for the purposes of this subsection).

(f) The restrictions contained in the foregoing subsection (b) through (e) shall not apply to obligations the interest on which is exempt from gross income pursuant to Section 103(a) of the Code (other than obligations that constitute "specified private activity bonds" within the meaning of Section 57(a)(5)(C) of the Code), and any interest or other income from such obligations, or the sale thereof, shall not be included in any of the calculations or rebates required pursuant to such subsections.

(g) None of the foregoing provisions of this Section 3.08 need be observed, and, anything herein or in the Indenture to the contrary notwithstanding, this Section 3.08 may be amended, supplemented or terminated by the Authority, the Trustee and the Borrower, (i) if the Administrator files a certificate with the Trustee stating that the rebate exceptions set forth in the Arbitrage Certificate of the Borrower have been fulfilled, (ii) if the Authority receives an opinion of Bond Counsel, in form and substance satisfactory to the Trustee, that (I) the failure to observe such covenants or entering into such amendments or supplements, will not cause the Series 2019 Bonds to become arbitrage bonds under Section 148 of the Code or otherwise adversely affect the exclusion of interest on the Series 2019 Bonds from the gross income of the owners thereof for purposes of federal income taxation or (II) additional or different regulatory or statutory provisions must be complied with for the interest on the Series 2019 Bonds to remain excludable from gross income for federal income tax purposes.

ARTICLE IV. Representations and Covenants

Section 4.01 Representations and Covenants of the Authority. The Authority makes the following representations and covenants as the basis for the undertakings on the part of the Borrower contained herein:

(a) The Authority is a public nonprofit corporation and a public instrumentality of Sevier County, Tennessee, organized and existing pursuant to the Act. The Authority is authorized to issue the Series 2019 Bonds in accordance with the Act and to use the proceeds thereof to provide funds for making the Loan.

(b) The Authority has complied with the provisions of the Act and has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The Authority is not in violation of any of the laws of the State of Tennessee which would affect its existence or its powers referred to in the preceding subsection (b).

(d) By resolution duly adopted by the Board of Directors of the Authority and in full force and effect on the date hereof, the Authority has authorized the execution and delivery of the Indenture, this Agreement and the Series 2019 Bonds, the due performance of all obligations of the Authority hereunder, under the Indenture and under the Series 2019 Bonds, and the taking of any and all actions as may be required on the part of the Authority to carry out, give effect to and consummate the transactions contemplated by each of the foregoing, and the Authority will take all actions within its reasonable control to obtain all approvals necessary in connection with the foregoing that have not been obtained as of the date hereof.

(e) This Agreement has been duly authorized, executed and delivered by the Authority, and upon due authorization, execution and delivery by the Borrower, will constitute a legal, valid and binding obligation of the Authority. The Series 2019 Bonds will constitute legal, valid and binding limited special obligations of the Authority and will be payable solely from the Trust Estate and any amounts otherwise available under the Indenture, and will be entitled to the benefit of the Indenture. None of the Authority (except to the foregoing extent), Sevier County, the State of Tennessee, or any political subdivision thereof shall be obligated, directly or (except as a Borrower from the Authority) indirectly, to pay the principal of or premium, if any, or interest on the Series 2019 Bonds. The Authority has no taxing power.

(f) The execution and delivery by the Authority of this Agreement, the Series 2019 Bonds, and the Indenture and the consummation of the transactions contemplated in each of the foregoing will not violate any indenture, mortgage, deed of trust, note, loan agreement or other contract or instrument to which the Authority is a party or by which it is bound or, to the best of the Authority's knowledge, any judgment, decree, order, statute, rule or regulation applicable to the Authority, and the Authority will take all actions within its reasonable control to obtain all consents, approvals, authorizations and orders of governmental or regulatory authorities which are required for the consummation of the transactions contemplated thereby that have not been obtained as of the date hereof.

(g) The Authority will apply or cause to be applied the proceeds of the Series 2019 Bonds in accordance with the Indenture and this Agreement.

(h) There is no action, suit, proceeding or investigation at law or in equity before or by any court, public board or body pending or threatened against or affecting the Authority or, to the best knowledge of the Authority, any basis therefore, wherein an unfavorable decision,

ruling, or finding would adversely affect the transactions contemplated hereby or by the Indenture or the Series 2019 Bonds or which, in any way, would adversely affect the validity of this Agreement, the Series 2019 Bonds, the Indenture or any agreement or instrument to which the Authority is a party and which is used or contemplated for use in consummation of the transactions contemplated by each of the foregoing.

(i) The Authority covenants that it will not pledge the amounts derived from this Agreement other than to secure the Series 2019 Bonds.

Section 4.02 Representations and Covenants of the Borrower. The Borrower makes the following representations and covenants, in addition to those elsewhere set forth herein, as the basis for the undertakings on the part of the Authority contained herein:

(a) The Borrower is a municipal corporation or political subdivision, as appropriate, within the meaning of the Act, duly created and existing under the laws of the State of Tennessee and possessing general powers of taxation, including the power to levy ad valorem taxes, and has full legal right, power and authority (i) to conduct its business and own its properties, (ii) to enter into this Agreement, and (iii) to carry out and consummate all other transactions contemplated by this Agreement.

(b) With respect to the authorization, execution and delivery of this Agreement, the Borrower has complied and will comply with all applicable laws of the State of Tennessee.

(c) The Borrower has duly approved the execution and delivery of this Agreement and has authorized the taking of any and all action as may be required on the part of the Borrower to carry out, give effect to and consummate the transactions contemplated by this Agreement and the Indenture.

(d) This Agreement has been duly authorized executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the Authority, will constitute a legal, valid and binding obligation of the Borrower enforceable in accordance with its terms.

(e) There is no action, suit, proceedings, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the Borrower, threatened against the Borrower, nor is there any basis therefor, (i) affecting the creation, organization or existence of the Borrower or the title of its officers to their respective offices, (ii) seeking to prohibit, restrain or enjoin the execution or delivery of this Agreement, (iii) in any way contesting or affecting the validity or enforceability of this Agreement or any agreement or instrument relating to any of the foregoing or used or contemplated for use in the consummation of the transactions contemplated by any of the foregoing, or (iv) materially adversely affecting the Borrower's financial condition or its obligations to make Loan Repayments under this Agreement.

(f) The Borrower is not in any material respect in breach of or in default under any applicable law or administrative regulation of the State or the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Borrower is a party or by which it or any of its properties is bound, and no event has occurred which with the passage of time, the giving of notice or both would constitute such a breach or default; and the

execution and delivery of this Agreement and compliance with the respective provisions thereof will not conflict with or constitute a breach of or default under any applicable law or administrative regulation of the State or of the United States of America or any applicable judgment or decree or any agreement or other instrument to which the Borrower is a party or by which it or any of its property is bound.

(g) So long as any Series 2019 Bonds are Outstanding, the Borrower shall promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become applicable to the Projects, the repair and alteration thereof, and the use or manner of use of the Projects, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change or governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof.

(h) The Borrower will not take or omit to take any action which action or omission will in any way cause the proceeds of the Series 2019 Bonds advanced to it to be applied in a manner contrary to that provided in the Indenture and this Agreement.

(i) The Borrower has not taken or omitted to take, and will not take or omit to take, any action, and knows of no action that any other person, firm or corporation has taken or intends to take, which would cause interest on the Series 2019 Bonds to be includable in the gross income of owners thereof for federal income tax purposes.

(j) The Borrower is not in default under any loan agreement, note, bond, mortgage or other instrument evidencing or securing indebtedness.

(k) The Borrower approves the issuance of the Series 2019 Bonds and, as of the date hereof, is not in default in the performance or observance of any of the covenants, conditions, agreements or provisions of this Loan Agreement and all warranties and representations of Borrower herein are true and correct on the date hereof.

(l) The Borrower covenants and agrees to provide annual audited financial statements to the Administrator as soon as reasonably practical upon their becoming available and, upon request, such other financial information as shall be reasonably requested to the Administrator and the Authority.

(m) The Borrower covenants and agrees to comply with the terms and requirements applicable to Borrower in the Indenture, the Fixed Rate Credit Agreement and the Program Administration Agreement.

(n) The interest on the Agreement is intended to be excludable from gross income for purposes of federal income taxation and the Borrower will take all actions reasonably required to prevent interest on this Agreement and on the Series 2019 Bonds from becoming includable in gross income for purposes of federal income taxation.

(o) The Borrower covenants and agrees to take all necessary action to enforce the payment and collection of Swap Receipts under a Swap Agreement, on behalf of the Authority, and to deposit, or cause to be deposited, all Swap Receipts with the Trustee.

(p) All information provided to the Authority in this Agreement or in any other document or instrument with respect to the Loan, this Agreement, or the Projects, was at the time provided, and is now, true, correct and complete, and such information does not omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE V. Events of Default

Section 5.01 Events of Default. An Event of Default shall occur hereunder if the payments required by Sections 3.01, 3.02 and 3.04 are not paid punctually when due.

Section 5.02 Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing the Borrower from complying with the terms of this Agreement), the Trustee, as assignee of the Authority, or any other Person who has succeeded to the rights of the Authority hereunder, including the registered owners of the Series 2019 Bonds, any Credit Provider and a Swap Counterparty, at any time thereafter and while such Event of Default shall continue, shall notify the Purchaser or the Credit Provider, if any, within five Business Days and may, at its option and subject to the provisions of the Indenture, take any action at law, including mandamus, or in equity to collect amounts then due and thereafter to become due hereunder as such amounts become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Agreement. Any amounts collected pursuant to action taken under this Article shall be applied in accordance with the Indenture.

ARTICLE VI. Prepayment

Section 6.01 Option to Prepay. The Borrower shall have the right and option to prepay in whole or in part the Loan advanced hereunder at the prices and upon the terms hereinafter set forth.

Section 6.02 Optional Prepayment Price (a) If the Series 2019 Bonds are in the Initial Fixed Rate Period, the prepayment amount shall be as follows: (i) if the prepayment date is at any time on and after _____, 2029, the prepayment amount shall be the Outstanding principal amount of the Series 2019 Bonds as of the designated Redemption Date, plus interest and Additional Payments accrued thereon to the Redemption Date of the Series 2019 Bonds and (ii) if the prepayment date is at any time before _____, 2029, the prepayment amount shall be the Outstanding principal amount of the Series 2019 Bonds as of the designated Redemption Date, plus interest and Additional Payments accrued thereon to the Redemption Date of the Series 2019 Bonds plus a premium in the amount of [make-whole provision].

(b) If the Series 2019 Bonds are bearing interest at the Fixed Rate during a Subsequent Fixed Rate Period, the Commercial Paper Rate, the Daily Rate or the Weekly Rate at the time of prepayment, the prepayment amount shall be the Outstanding principal amount of the Series 2019 Bonds as of the designated Redemption Date, plus interest and Additional Payments accrued thereon to the Redemption Date of the Series 2019 Bonds. The prepayment amount shall be separate and apart from any amounts that may be owed pursuant to the Swap Documents.

(c) If the Series 2019 Bonds are bearing interest at the Long Term Rate at the time of prepayment, the prepayment amount shall be the applicable Redemption Price as set forth in Section 3.02(b) of the Indenture, plus interest accruing between the Prepayment Date and the Redemption Date (or, if said investment earnings exceed interest accrued during said period, less said excess), plus Additional Payments accrued to the Redemption Date.

(d) If any of the Series 2019 Bonds are Pledged Bonds at the time of prepayment, the prepayment amount with respect to such Pledged Bonds shall be the Outstanding principal amount of such Pledged Bonds, plus Additional Payments and interest (including interest at the applicable Credit Agreement Rate) accrued to the Redemption Date.

Section 6.03 Notice of Prepayment. Unless waived by the Trustee, the Borrower shall give notice of its intent to prepay its Loan to the Trustee and the Administrator in the manner for giving notices hereunder pursuant to Section 8.07 hereof at least [ten (10)] days prior to the Prepayment Date. The notice shall state the intent of the Borrower to prepay its Loan or a portion thereof, and the proposed Prepayment Date. The Borrower shall cause the Administrator to instruct the Trustee as to the investment of the funds so deposited and the amount of the Optional Prepayment Price required to be paid by the Borrower, and the Authority and Trustee are entitled to rely on said instructions. After the notice of prepayment has been given as above provided, the Series 2019 Bonds shall not be converted from one Interest Period to another Interest Period.

Section 6.04 Partial Prepayment. If the Borrower exercises its right and option to prepay the Loan in part, the prepayment shall be in an amount such that the Series 2019 Bonds remaining Outstanding after the Redemption Date will be in a denomination permitted under the Indenture (an “Authorized Denomination”) and no portion of a Series 2019 Bond shall be redeemed that would result in a Series 2019 Bond remaining Outstanding that is smaller than the minimum Authorized Denomination for the Series 2019 Bonds. The principal prepayment amount shall be applied in reduction of payment obligations set forth on Exhibit C in the inverse order of maturity.

Section 6.05 Deposit of Prepayment Amount. If the Series 2019 Bonds are bearing interest at the Commercial Rate, the Weekly Rate, the Daily Rate or the Fixed Rate, the prepayment amount shall be deposited with the Trustee in immediately available funds not later than 10:00 a.m., Nashville time, on the Redemption Date. If the Series 2019 Bonds are bearing interest at the Long Term Rate, the prepayment amount shall be deposited on any date prior to the Redemption Date.

Section 6.06 Discharge of Other Obligations. Notwithstanding any other provisions hereof, this Agreement shall not terminate on the date on which the Borrower shall be obligated to prepay (whether or not any delay in the completion of such prepayment shall be the fault of Authority), nor shall the Borrower obligations hereunder cease until the Borrower shall have paid all amounts payable hereunder without set-off, counterclaim, abatement, suspension, deduction, diminution, or defense for any reason whatsoever, so long as the Series 2019 Bonds are Outstanding and unpaid, and until the Borrower shall have discharged or made provision satisfactory to Authority for the discharge of, all of its obligations under this Agreement, which obligations have arisen on or before the date for prepayment, including the obligation to pay amounts due and payable on the date of the prepayment.

ARTICLE VII. Indemnification

Section 7.01 Indemnification of Trustee, Administrator and Authority. The Borrower covenants and agrees, to the extent it is authorized by applicable law, to indemnify the Trustee, the Administrator and the Authority and each successor trustee and the officers, directors, employees and agents of the Trustee or any such successor trustee, the Administrator and the Authority (the Trustee, each successor trustee, the Authority, the Administrator and such officers, directors, employees and agents being hereinafter referred to in this Section collectively as the “Indemnified Parties” and individually as an “Indemnified Party”) for, and to hold each Indemnified Party harmless against, any loss, liability, tax, assessment or other governmental charge (other than taxes applicable to their compensation hereunder) or expenses incurred without negligence, willful misconduct or bad faith on the part of such Indemnified Party, arising out of or in connection with the acceptance or administration of the Indenture or the trusts thereunder and the duties of the Trustee, the Administrator and the Authority thereunder (but only to the extent the Indenture, its administration, required duties and trusts thereunder are applicable to Borrower, this Agreement or the Series 2019 Bonds), including enforcement of this Agreement and this Section thereof and also including any liability which may be incurred as a result of failure to withhold, pay or report any tax, assessment or other governmental charge, and the costs and expenses incurred by such Indemnified Party in the course of defending itself against or investigating any claim of liability in the premises. The obligations of the Borrower under this Section to compensate and indemnify the Indemnified Parties and to pay or reimburse each Indemnified Party for expenses, disbursements and advances shall constitute an additional obligation hereunder and shall survive the satisfaction and discharge of this Agreement.

ARTICLE VIII. Miscellaneous

Section 8.01 Waiver of Statutory Rights. The rights and remedies of the Authority and the Borrower under this Agreement shall not be adversely affected by any laws, ordinances, or regulations, whether federal, state, county, city, municipal or otherwise, which may be enacted or become effective from and after the date of this Agreement affecting or regulating or attempting to affect or regulate any amounts payable hereunder.

Section 8.02 Non-Waiver by Authority. No failure by the Authority or by any assignee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy

consequent upon a breach thereof, and no acceptance of any payment hereunder, in full or in part, during the continuance of such breach, shall constitute waiver of such breach or of such term. No waiver of any breach shall affect or alter this Agreement or constitute a waiver of a then existing or subsequent breach.

Section 8.03 Remedies Cumulative. Each right, power and remedy of the Authority provided for in this Agreement shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers or remedies are sought to be enforced, and the exercise or beginning of the exercise by the Authority or the Trustee of any one or more of the rights, powers or remedies provided for in this Agreement or now or hereafter existing at law or in equity or by statute, or otherwise shall not preclude the simultaneous or later exercise by the Authority or Trustee of any or all such other rights, powers or remedies.

Section 8.04 Amendments, Changes and Modification. Except as otherwise provided in this Agreement or in the Indenture, subsequent to the issuance of the Series 2019 Bonds and prior to the payment in full of the Series 2019 Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Agreement may not be effectively amended, changed, modified, altered or terminated without the concurring written consent of the Trustee and, during the Fixed Rate Period, the Purchaser, and during any Credit Facility Period, the Credit Provider, and to the extent such amendment would affect the rights or obligations of a Swap Counterparty, the Swap Counterparty under a Swap Agreement.Applicable Law - Entire Understanding. This Agreement shall be governed exclusively by the applicable laws of the State of Tennessee. This Agreement expresses the entire understanding and all agreements of the parties hereto with each other and neither party hereto has made or shall be bound by any agreement or any representation to the other party which is not expressly set forth in this Agreement.

Section 8.06 Severability. In the event that any clause or provision of this Agreement shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provisions shall not affect any of the remaining provisions of such instrument.

Section 8.07 Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Agreement shall be in writing, and shall be deemed to have been properly given and received if sent by United States certified or registered mail, postage prepaid, (a) if to the Borrower, addressed to the Borrower, at 111 West Vine Street, Murfreesboro, TN 37130, Attention Mayor; (b) if to the Authority, addressed to the Authority, c/o Sharp & Ripley PLLC, Mill Corner Place, 248 Bruce Street, Suite 7, Sevierville, Tennessee 37862, Attention: Ronald Sharp, Esq.; (c) if the Administrator, at 813 S. Northshore Drive, Suite 201A, Knoxville, Tennessee 37919, Attention: Joseph K. Ayres; (d) if to the Trustee, addressed to the Trustee at 150 Fourth Avenue North 9th Floor Nashville, TN 37219, Attention: Corporate Trust; and (e) if to the Purchaser, addressed to the Purchaser at 1900 5th Avenue North, Suite 2400, Birmingham, Alabama 35203 or at such other addresses as any addressee from time to time may have designated by written notice to the other addressees named above. The Authority shall promptly forward to the Borrower and the Purchaser copies of any notice received by it from the Trustee under the Indenture.

Section 8.08 Headings and References. The headings in this Agreement are for the convenience of reference only and shall not define or limit the provisions thereof. All references in this Agreement to particular Articles or Sections are references to Articles or Sections of this Agreement, unless otherwise indicated.

Section 8.09 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 8.10 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 8.11 Amendments, Changes and Modifications of Indenture. The Authority covenants and agrees that it will not, without the prior written consent of the Borrower, enter into or consent to any amendment, change or modification of the Indenture which would adversely affect the Borrower rights under this Agreement.

Section 8.12 No Liability of Authority's and Borrower's Officers. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any incorporator, member, director or officer, as such, past, present or future, of the Authority or the Borrower, either directly or through the Authority or the Borrower. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director or officer is hereby expressly waived and released by the Borrower and the Authority against the other's incorporators, members, directors or officers as a condition of and consideration for the execution of this Agreement.

Section 8.13 Refunding of the Series 2019 Bonds. The Series 2019 Bonds may be refunded at any time and from time to time as permitted by applicable law, upon the direction of the Borrower. In the event the Series 2019 Bonds are refunded by bonds issued by the Authority, all references in this Agreement to (i) the Series 2019 Bonds shall be deemed to refer also to the refunding bonds, (ii) the Indenture shall be deemed to refer also to the indenture or

other instrument pursuant to which the refunding bonds are issued, and (iii) any funds or accounts referred to herein shall be deemed to refer also to the corresponding funds or accounts established under the indenture or other instrument pursuant to which the refunding bonds are issued.

Section 8.14 Continuing Disclosure. In the event the Series 2019 Bonds are not exempt under Section 15c2-12, the Borrower hereby covenants and agrees that it will provide such annual financial information and material event notices, if any, as required by Rule 15c2-12 of the Securities Exchange Commission for the Series 2019 Bonds. The Authorized Borrower Representative is authorized to execute an agreement for the benefit of and enforceable by the owners of the Series 2019 Bonds specifying the details of the financial information and material event notices to be provided and its obligations relating thereto. Failure of the Borrower to comply with the undertaking herein described and to be detailed in said closing agreement, shall not be a default hereunder, but any such failure shall entitle the owner or owners of any of the Series 2019 Bonds to take such actions and to initiate such proceedings as shall be necessary and appropriate to cause the Borrower to comply with its undertaking as set forth herein and in said agreement, including the remedies of mandamus and specific performance.

Section 8.15 Allocation for Purposes of Section 265. The Borrower hereby agrees that the proceeds of the Series 2019 Bonds and of the Loan shall be allocated to it for purposes of Section 265 of the Code.

IN WITNESS WHEREOF, THE PUBLIC BUILDING AUTHORITY OF SEVIER COUNTY, TENNESSEE, has executed this Loan Agreement by causing its name to be hereunto subscribed by its Chairman and attested by its Secretary; and the CITY OF MURFREESBORO, TENNESSEE has executed this Loan Agreement by causing its name to be hereunto subscribed by its Mayor and City Recorder, all being done as of the day and year first above written, but with an effective date of _____, 2019.

THE PUBLIC BUILDING AUTHORITY OF
SEVIER COUNTY, TENNESSEE

By: _____
Chairman

ATTEST:

Secretary

CITY OF MURFREESBORO, TENNESSEE

By: _____
Title: Mayor

ATTEST:

By: _____
Title: City Recorder

EXHIBIT A
REQUISITION
Series 2019 Bonds

REQUISITION NO. ____

The undersigned, being an Authorized Borrower Representative within the meaning of that term as set forth in a Loan Agreement (the "Loan Agreement"), dated as of _____, 2019, by and between The Public Building Authority of Sevier County, Tennessee and the City of Murfreesboro, Tennessee (the "Borrower"), submits this Requisition on behalf of the Borrower pursuant to Section 2.04 of the Loan Agreement, as follows:

1. Borrower, through its Authorized Borrower Representative, hereby requests disbursement to the Borrower pursuant to the Loan Agreement of \$_____.
2. All amounts advanced hereunder will be used to pay Cost of the Projects, as defined in the Loan Agreement.
3. The amounts requested hereunder have not been the subject of a previous request for disbursement of funds.
4. The subject of this request is a proper Cost of the Projects, as described in the Loan Agreement.
5. The amount requested should be wired to:

City of Murfreesboro:

Bank: _____
ABA Number: _____
Account Name: _____
Account Number: _____

It is understood that your duties will be discharged with respect to the disbursement requested hereunder if payment is made as provided herein.

IN WITNESS WHEREOF, the undersigned has hereunto set his (her) hand, this ____ day of _____, ____.

CITY OF MURFREESBORO, TENNESSEE

Name: _____
Title: _____

Funding Date: _____, ____.

Note: Requisitions will be funded on the 1st Business Day of each month. Requisitions should be received by the Trustee no later than 12:00 noon eastern time on the preceding the 1st in order to be paid on the following Business Day.

After execution, fax the Requisition as follows:

<u>To the Trustee:</u> Regions Bank, Corporate Trust Attn: Wally Duke (615) 770-4359 (Office-Confirm) (615) 770-4350 (FAX)	<u>To the Administrator:</u> TN-Loans Program Administrators, Inc. (865) 988-2663 (Office-Confirm) (865) 988-1863 (FAX)
--	--

To: Regions Bank, as Trustee, an Alabama banking corporation, as Trustee under that certain Indenture of Trust, dated as of August 1, 2008 with The Public Building Authority of Sevier County, Tennessee

Incumbency Certificate

Listed below are those individuals authorized to execute a Requisition for disbursement of funds under that certain Series 2019 Loan Agreement, dated as of August 1, 2008, by and between The Public Building Authority of Sevier County, Tennessee and City of Murfreesboro, Tennessee (the "Borrower").

Name	Title	Specimen Signature
_____	<u>Mayor</u>	_____
_____	<u>City Recorder</u>	_____
_____	_____	_____

Dated: _____

By: _____

Name: _____

Title: _____

EXHIBIT B

COMPLETION CERTIFICATE

Series 2019 Bonds

The undersigned, being an Authorized Borrower Representative within the meaning of that term as set forth in a Loan Agreement ("Loan Agreement"), dated as of _____, 2019, by and between The Public Building Authority of Sevier County, Tennessee and the City of Murfreesboro, Tennessee (the "Borrower"), submits this Completion Certificate on behalf of the Borrower pursuant to Section 2.04 of the Loan Agreement, as follows:

1. No additional advances of funds under the Loan Agreement will be requested from the Trustee, and no additional Requisitions for disbursement of funds will be presented to the Trustee;

2. The Projects to be financed with the proceeds of the Loan under the Loan Agreement have been completed or sufficient funds are available to complete the Projects to the satisfaction of the Borrower; and

3. The Authority and the Trustee are directed to apply any excess funds remaining in the Borrower Account of the Loan Fund under the Loan Agreement in accordance with the provisions of Section 2.04 of the Loan Agreement.

Notwithstanding the foregoing, this Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has hereunto set his (her) hand this _____ day of _____, ____.

CITY OF MURFREESBORO, TENNESSEE

Name: _____

Title: _____

EXHIBIT C

PRINCIPAL REDUCTION SCHEDULE

<u>Date (_____ 25)</u>	<u>Principal Payment</u>
2020	\$3,155,000
2021	3,245,000
2022	3,335,000
2023	3,430,000
2024	3,530,000
2025	3,630,000
2026	3,735,000
2027	3,840,000
2028	3,945,000
2029	4,060,000
2030	4,175,000
2031	4,295,000
2032	4,415,000
2033	4,540,000
2034	4,670,000

26092816.2

ANNEX 1

SUMMARY OF TERMS AND CONDITIONS

**Municipal Advisor
Rule Disclosure:**

STI Institutional & Government, Inc. (Lender) is an institutional buyer and makes direct purchase loans to Municipal Entities and Obligated Persons as defined under the Municipal Advisor Regulation, and in this term sheet is providing information regarding the terms under which it would make such a purchase for its own account.

- (a) Lender is not recommending an action to Borrower, the Guarantors or the issuer of the debt;
- (b) Lender is not acting as an advisor to Borrower, the Guarantors or the issuer of the debt and does not owe a fiduciary duty pursuant to Section 15B of the Exchange Act to Borrower, the Guarantors or the issuer of the debt with respect to the information and material contained in this communication;
- (c) Lender is acting for its own interests; and
- (d) Borrower, the Guarantors and the issuer of the debt should discuss any information and material contained in this communication with any and all internal or external advisors and experts that the municipal entity or obligated person deems appropriate before acting on this information or material.

Borrower: City of Murfreesboro, Tennessee ("*Borrower*")

Lender: STI Institutional & Government, Inc. ("*Lender*")

Facility: Non-Bank Qualified Loan in the form of a tax-exempt note ("*Loan*")

The Loan will be funded in a single drawdown on the closing date.

Loan Amount: \$58,000,000.00

Purpose: To finance various capital projects for the City.

Maturity Date: June 1st 2034

Interest Rate: The rate quoted below is current as of the date of the proposal and is valid for 60 days. If the facility has not closed by March 11, 2019, the rate will adjust to then current market rates at which time a rate lock of up to 60 days would be available for an additional 4 bps.

The Borrower understands that market interest rates are subject to change. The Borrower also understands that in the event the Facility is funded during the Rate Lock Period, the Rate will become the effective interest rate for the Facility even if market interest rates are lower than the Rate at the time the Facility is funded.

A fixed rate equal to 2.84% p. a. calculated on the basis of the actual number of days per month and a 360-day year.

If the Facility is not closed for any reason on or before the expiration of the Rate Lock Period, Lender may, in its sole discretion, offer a new fixed rate and a revised closing date, provided, however, that if the revised interest rate is unacceptable to the Borrower, the Borrower shall not be obligated to proceed with the Facility. Notwithstanding the foregoing, in the event the Facility is not funded for any reason, the Borrower shall be obligated to reimburse any fees and expenses incurred by Lender in connection with the Facility including, without limitation, attorney's fees

Origination Fee: WAIVED.

Repayments: Interest shall be payable monthly calculated on the basis of the actual number of days per month and a 360-day year due beginning the first day of the month following the closing. Principal shall be payable annually on June 1st beginning June 1st 2020, based on principal scheduled in Exhibit B "Proposed Amortization"

Prepayment: **10 Year Par call:** Borrower may prepay the Loan in whole or in part at any time upon two Business Days' prior written notice to Lender without penalty following the ten (10) year anniversary of the closing date. Such prepayment notice shall specify the amount of the prepayment which is to be made.

In the event of a prepayment of the Loan prior to the ten (10) year anniversary of the closing date, Borrower may be required to pay Lender an additional fee (a prepayment charge or premium) determined by Lender's make whole compensation provision in the loan documents, to compensate Lender for all losses, costs and expenses incurred in connection with such prepayment. Any partial prepayment shall be applied as determined by Lender in its sole discretion.

**Accounts and
Payments by
Auto Debit:**

Borrower agrees to execute an agreement authorizing Lender to debit a deposit account maintained by Borrower with SunTrust Bank or bank of its choice approved by Lender for all amounts due under the Loan.

Security: General Obligation pledge of the City of Murfreesboro, TN.

**Representations
and Warranties:** Usual and customary for Lender in transactions of this type.

**Affirmative
Covenants:** In addition to the covenants expressly set forth herein, other affirmative covenants usual and customary for Lender in transactions of this type, including without limitation: Borrower shall submit to the Lender annual audited financial statements within 270 days of fiscal year end and an annual budget within 30 days of adoption, together with any other information the Lender may reasonably request, in form satisfactory to Lender, and other additional information, reports or schedules (financial or otherwise), all as Lender may request.

**Negative
Covenants:** Usual and customary of Lender in transactions of this type.

Events of Default:

Events of default will mirror what is the City's existing GO Bond Debt to include a Payment Default with the remedy being a default rate which shall be increased from the stated default rate of Prime + 5%, to the lesser of 18% or the maximum allowed rate by law.

Opinion of Counsel:

- (a) Borrower shall be required to deliver a written opinion from Borrower's Counsel, in form and substance acceptable to the Lender and Lender's Counsel.
- (b) Receipt of opinion from Note Counsel in form and substance satisfactory to the Lender, which shall include, without limitation, an opinion that the interest on the Note is excludable from gross income of the owners thereof for Federal income tax purposes.

Legal Fee Quote:

Our proposed Lender's counsel is Jeffrey Poley at Parker Poe in Raleigh, North Carolina. Fees for Lender's counsel will:

- (a) Not exceed \$15,000.00 if our counsel closes the transaction and reviews documentation prepared by the note counsel or counsel to the Borrower, or
- (b) Borrower agrees to pay the agreed fees for Lender's counsel and all other reasonable fees, charges, expenses and costs in connection with the transaction.
- (c) Payment by borrower of expenses described herein shall not be contingent upon closing and legal fees on account of borrower after documentation has started are payable regardless of whether the transaction closes.
- (d) If the loan has extraordinary negotiations, unexpected issues arise or the loan does not close before the closing date set in the commitment the legal fee will be increased to reflect any extra work performed and Borrower agrees to pay such fee.

Closing Conditions:

The closing of the Loan shall be conditioned upon satisfaction (or valid waiver) of conditions precedent usual and customary for transactions of this type, including, without limitation, the following conditions (all of the items to be delivered in form and substance satisfactory to Lender): (1) receipt and review of (a) all financial, formation and other information required by Lender on Borrower) and their constituent entities and other entities specified by Lender, including all due diligence materials to verify authority, identity and background information for regulatory purposes under applicable "know your customer" and anti-money laundering laws, as deemed necessary by Lender in its sole and absolute discretion and (b) such other information and due diligence deliveries as are requested by and acceptable to Lender, including, but not limited to, an environmental questionnaire and any other requested due diligence with respect to any applicable real property, legal documentation and attorney opinion letters; (2) authorization, execution and delivery of such documentation as is standard and customary for this type of transaction or otherwise deemed necessary or appropriate by Lender, including customary increased cost, yield protection provisions, treating Basel III and Dodd Frank as changes in law in a manner similar to that proposed by the LSTA for such provisions; and (3) there shall not have occurred, in the opinion of Lender, any material adverse change in the business or financial condition of Borrower or in any other state of facts submitted to Lender in connection with the Loan, from that which existed at the time Lender initially considered the proposed Loan.

The funding of the Loan shall be subject to accuracy of representations and warranties as of the date of such Loan and no event of default or incipient default

under the Loan shall have occurred and be continuing as of the date of such Loan or would result from making the Loan.

**Expenses and
Indemnification:**

Borrower will pay all costs and expenses of Lender in connection with the administration and enforcement of all documentation executed in connection with the Loan including, without limitation, the fees, charges and disbursements of Lender's counsel (including in-house counsel) subject to the limitations above regarding the loan closing counsel fees.

**Governing Law and
Jurisdiction:**

State of TN.

Swap Disclaimer:

Nothing herein constitutes an offer or recommendation to enter into any "swap" or trading strategy involving a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act. Any such offer or recommendation, if any, will only occur after we have received appropriate documentation from you regarding whether you are qualified to enter into a swap under applicable law.

This Summary of Terms and Conditions is intended as an outline of certain material terms and conditions applicable to the Loan and does not purport to describe all of the terms and conditions, representations and warranties, covenants and other provisions that could be contained in the definitive loan and collateral documentation relating to the Loan.

DRAFT

Independent Registered Municipal Advisor Certificate

To: The City of Murfreesboro, Tennessee

Cc: Cumberland Securities ("IRMA")

Each of SunTrust Bank, STI Institutional & Government, Inc., SunTrust Equipment Finance & Leasing Corp. and SunTrust Robinson Humphrey, Inc. (collectively, "**SunTrust**")¹ hereby discloses to the undersigned that, by obtaining the below representation from you, none of the SunTrust entities is a municipal advisor and none of the SunTrust entities is subject to the fiduciary duty established in Section 15B(c) (1) of the Securities Exchange Act of 1934, as amended. In the context of a potential transaction between a SunTrust entity and you, and/or a potential engagement between a SunTrust entity and you, in any discussions, communications, conferences, negotiations and undertakings, (a) each SunTrust entity will act as a principal and not in a fiduciary capacity; (b) no SunTrust entity has assumed an advisory or fiduciary responsibility in favor of you; and (c) no SunTrust entity is acting as your financial advisor. The SunTrust entities have financial and other interests that may differ from yours. Further, each SunTrust entity advises you to consult your own legal, financial and other advisors to the extent you deem appropriate.

IRMA Certification:

The undersigned state or local government or obligated person has retained an independent registered municipal advisor ("**IRMA**"). The undersigned is represented by and will rely on the below listed IRMA to provide advice on proposals from any SunTrust entity concerning the making of loans or the purchase of municipal securities for its own account, and/or proposals concerning municipal financial products. The personnel of the IRMA who will advise the undersigned on such matters have represented to the undersigned that they have not been associated with SunTrust within the two years prior to the date of this certificate.

This certificate may be relied upon until it is withdrawn.

CLIENT LEGAL NAME

By: _____

Name: _____

Date: _____

Title: _____

Name of IRMA: _____

IRMA Email Address: _____

¹ The SunTrust Bank Tax Exempt Loan Program and other direct purchase municipal financings are offered by SunTrust Bank or its subsidiary, ST Institutional & Government, Inc. Risk management and derivative products are offered by SunTrust Bank. SunTrust Robinson Humphrey is the trade name for the corporate and investment banking services of SunTrust Banks, Inc. and its subsidiaries, including SunTrust Robinson Humphrey, Inc., member, FINRA and SIPC. Debt and equity underwriting, trading, research and sales, loan syndications, municipal securities trading and sales, and mergers and acquisitions advisory services are offered by SunTrust Robinson Humphrey, Inc.

The SunTrust Bank Tax Exempt Loan Program and other direct purchase municipal financings are offered by SunTrust Bank or its subsidiary, ST Institutional & Government, Inc. Risk management and derivative products are offered by SunTrust Bank. SunTrust Robinson Humphrey is the trade name for the corporate and investment banking services of SunTrust Banks, Inc. and its subsidiaries, including SunTrust Robinson Humphrey, Inc., member, FINRA and SIPC. Debt and equity underwriting, trading, research and sales, loan syndications, municipal securities trading and sales, and mergers and acquisitions advisory services are offered by SunTrust Robinson Humphrey, Inc.

DEBT SERVICE

City of Murfreesboro, Tennessee \$58,000,000 Local Government Public Improvement Bonds, Series 2019

Date	Principal	Coupon	Interest	Total P+I	Fiscal Total
06/01/2020	3,155,000.00	2.840%	1,647,200.00	4,802,200.00	4,802,200.00
06/01/2021	3,245,000.00	2.840%	1,557,598.00	4,802,598.00	4,802,598.00
06/01/2022	3,335,000.00	2.840%	1,465,440.00	4,800,440.00	4,800,440.00
06/01/2023	3,430,000.00	2.840%	1,370,726.00	4,800,726.00	4,800,726.00
06/01/2024	3,530,000.00	2.840%	1,273,314.00	4,803,314.00	4,803,314.00
06/01/2025	3,630,000.00	2.840%	1,173,062.00	4,803,062.00	4,803,062.00
06/01/2026	3,735,000.00	2.840%	1,069,970.00	4,804,970.00	4,804,970.00
06/01/2027	3,840,000.00	2.840%	963,896.00	4,803,896.00	4,803,896.00
06/01/2028	3,945,000.00	2.840%	854,840.00	4,799,840.00	4,799,840.00
06/01/2029	4,060,000.00	2.840%	742,802.00	4,802,802.00	4,802,802.00
06/01/2030	4,175,000.00	2.840%	627,498.00	4,802,498.00	4,802,498.00
06/01/2031	4,295,000.00	2.840%	508,928.00	4,803,928.00	4,803,928.00
06/01/2032	4,415,000.00	2.840%	386,950.00	4,801,950.00	4,801,950.00
06/01/2033	4,540,000.00	2.840%	261,564.00	4,801,564.00	4,801,564.00
06/01/2034	4,670,000.00	2.840%	132,628.00	4,802,628.00	4,802,628.00
	58,000,000.00		14,036,416.00	72,036,416.00	

Date Structure

Date 03/01/2019
First Coupon Date 06/01/2019

Yield Statistics

Average Coupon 2.84000000%
Weighted Average Maturity 8.771
True Interest Cost (TIC) 2.8403309%



SOURCES AND USES OF FUNDS

City of Murfreesboro, Tennessee \$58,000,000 Local Government Public Improvement Bonds, Series 2019

Sources:

Bond Proceeds:	
Par Amount	58,000,000.00
	58,000,000.00

Uses:

Project Fund Deposits:	
Project Fund	57,869,005.00
Delivery Date Expenses:	
Cost of Issuance	130,995.00
	58,000,000.00

Note: An annual fee of \$2,000 will be due to Regions Bank, the Corporate Trustee.

City of Murfreesboro, Tennessee

Summary of Proposals - Fixed Rate Loan

Fixed Rate Loan - Full Term

	SunTrust	JP Morgan/DNT AT	BAML	Pinnacle Bank	BB&T Bank	TMBF
Maximum Amount	\$58,000,000	\$58,000,000	\$58,000,000	\$58,000,000	\$58,000,000	\$58,000,000
Type	Bank Loan	Bank Loan	Bank Loan	Bank Loan	Bank Loan	Bank Loan

Bank/Firm Fees (Upfront)			\$ -	\$ 200,100	\$ -	\$ 278,400
Legal Fees	\$ 15,000	\$ 15,000	\$ 37,500	\$ 15,000	\$ 20,000	Included above
Est Total Costs	\$ 15,000	\$ 15,000	\$ 37,500	\$ 215,100	\$ 20,000	\$ 278,400

Indicative Rate	2.84%*	2.97%	3.00%	3.44%	3.61%	3.81%
Optional Redemption	10-Year Par Call	10-Year Par Call	10-Year Par Call			8-yr call with 1% penalty
Termination Fee						1% after 8 years None after 13 years
Other	Loan fully funded at closing. No draw period.	Loan fully funded at closing. No draw period.		Interest only quarterly for first year during draw down period of \$4.833mm/mo.		Draw facility, with 1/4th of loan drawn quarterly over four years.
Other	5bps discount for make-whole call. 14bps increase for Draw Feature.	8bps discount for make-whole call. 13bps increase for Draw Feature.				

Fixed Rate Loan - Rate Lock

	Regions Bank	US Bank
Maximum Amount	\$58,000,000	\$58,000,000
Type	Bank Loan	Bank Loan

	\$ -
\$ 12,500	\$ 40,000
\$ 12,500	\$ 40,000

Rate Locks	Rate Lock
Varies	
Varies	
Rate Locks: 3-YR = 2.56% 5-YR = 2.64% 7-YR = 2.82%	Rate Lock: 3-YR = 2.70%**

* SunTrust rates are good through March 11, 2019, after which, they will become indicative rates.

** US Bank rates are good through May 10, 2019, after which, they will become indicative rates.

City of Murfreesboro, Tennessee

Summary of Proposals - Letters of Credit and Direct Purchase Loans

Letter of Credit

	BAML	PNC Bank	JP Morgan
Long-Term Rating	Aa3/A+/AA-	A2/A/A+	Aa2/A+/AA
Short-Term Rating	P-1/A-1/F1+	P-1/A-1/F1+	P-1/A-1/F1+
Long-Term Outlook	Rev +/Sta/Sta	Sta/Sta/Sta	Sta/Sta/Sta
Maximum Amount	\$ 58,000,000	\$ 58,000,000	\$ 58,000,000

	Facility Fee	Facility Fee	Facility Fee
1 Year	N/A	N/A	0.37%
2 Years	0.30%	0.27%	N/A
3 Years	0.35%	0.30%	0.44%
5 Years	N/A	N/A	0.52%
7 Years	N/A	N/A	0.59%
Full Term	N/A	N/A	N/A

Upfront Fee	\$0.00	\$0.00	\$0.00
Legal Cap	\$37,500.00	\$20,000.00	\$25,000 - \$35,000
Option Redemption	Anytime	Anytime	Anytime
Termination Fee	Penalty Prior to 1-YR	Penalty Prior to 1-YR	Make-Whole Provision through Stated Expiration
Other			

Direct Bank Purchase

	BAML	BB&T	JP Morgan/DNT AT	Regions Bank	TMBF	US Bank
Long-Term Rating	N/A	N/A	N/A	N/A	N/A	N/A
Short-Term Rating	N/A	N/A	N/A	N/A	N/A	N/A
Long-Term Outlook	N/A	N/A	N/A	N/A	N/A	N/A
Maximum Amount	\$ 58,000,000	\$ 58,000,000	\$ 58,000,000	\$ 58,000,000	\$ 58,000,000	\$ 58,000,000

% of Index	80%	79%	79%	79%	100%	80%
Spread to:	LIBOR	LIBOR	LIBOR	LIBOR	Variable Rate Based on SIFMA	LIBOR
1 Year	N/A	N/A	0.33%	0.39%	N/A	N/A
2 Years	N/A	N/A	N/A	N/A	N/A	N/A
3 Years	0.35%	N/A	0.48%	0.42%	N/A	0.60%
5 Years	0.50%	N/A	0.58%	0.50%	N/A	N/A
7 Years		N/A	0.63%	0.59%	0.85%	N/A
Full Term	N/A	0.553%	0.72%	N/A	N/A	N/A

Upfront Fee	\$0.00	\$0.00	\$0.00	\$0.00	\$278,400.00	\$0.00
Legal Cap	\$37,500.00	\$20,000.00	\$15,000.00	\$12,500.00	Included in Upfront Fee	\$40,000.00
Option Redemption	Anytime	Anytime	Varies (3-yr min)	Anytime	Anytime	Anytime
Termination Fee	Penalty Prior to 1-YR	None	Through earliest termination date	None	None	Penalty Prior to 1-YR
Other					Other Fees: Trustee = \$1,200/year TMBF = Over \$500,000 during term of loan.	

Notes: Letter of Credit would require a remarketing agent (approximately 6-8bps/year) plus upfront rating and on-going ratings.

City of Murfreesboro, Tennessee

Best Proposals

Fixed Rate	
Full Term	
Bank Loan	
SunTrust	
Maximum Amount	\$58,000,000
Type	Bank Loan

Indicative Rate	2.84%*
Average Life	9.02
Bank Counsel Fee	\$ 15,000

Optional Redemption	10-Year Par Call
Termination Fee	
Other	Loan fully funded at closing. No draw period.
Other	5bps discount for make-whole call. 14bps increase for Draw Feature.

Variable Rate		
Letter of Credit		
	BAML	PNC Bank
Maximum Amount	\$ 58,000,000	\$ 58,000,000
Type	VRDB	VRDB

	Facility Fee	Facility Fee
2 Years	0.30%	0.27%
3 Years	0.35%	0.30%
Full Term	N/A	N/A

Upfront Fee	\$0.00	\$0.00
Bank Counsel Fee	\$37,500.00	\$20,000.00
Option Redemption	Anytime	Anytime
Termination Fee	Penalty Prior to 1-YR	Penalty Prior to 1-YR
Long-Term Rating	Aa3/A+/AA-	A2/A/A+
Short-Term Rating	P-1/A-1/F1+	P-1/A-1/F1+
Long-Term Outlook	Rev +/Sta/Sta	Sta/Sta/Sta

* SunTrust rates are good through March 11, 2019, after which, they will become indicative rates.

** Notes: Letter of Credit would require a remarketing agent (approximately 6-8bps/year) plus upfront rating and on-going ratings.

COUNCIL COMMUNICATION

Meeting Date: 2/13/19

Item Title: Water Resources Policies, Procedures, and General Design Requirements Revisions

Department: Utility Enterprises

Presented by: Valerie Smith, Darren Gore

Summary

The Policies, Procedures, and General Design Requirements (P&P) was originally approved by the Board August 25, 2009 and Council on September 17, 2009. There have been two (2) amendments to these P&P that have been approved by Board and Council in 2010 and 2016. The revisions brought before you for consideration today are more comprehensive than an amendment and should be considered a version 2.0 of the original document.

Background Information

Staff reached out to the Development Community and held a Stakeholders meeting November 29th at City Hall to discuss the changes. Two (2) developers were present at the meeting and did not have any negative feedback regarding the changes. Several local engineering firms had representatives present at the meeting. The revisions were approved by the Water Resources Board at their December 11, 2018 Board meeting.

The highlights that involve potential cost implications to contractors and developers were the main focus at the stakeholder meeting. These are broken down as follows:

1. Contractor / Increased Construction costs include:
 - a. Potential bid increase to pre-test the sewer manholes prior to paving and the required MH testing after paving.
 - b. Bid increase to provide a 5" Storz Connection on all new fire hydrant installations. This connection is a "quick connect" for the Murfreesboro Fire & Rescue Department's fire truck hoses.
 - c. The discontinuance of SDR 35 PVC for sewer mains which is a thinner wall pipe and requiring SDR 26 PVC which is thicker.
 - d. Potential increase in large (3" and larger) meter installations since these are to be purchased and installed by the Contractor per the Department's specifications. May include Contractor mark-up.
2. Developer Increases:
 - a. Potential increase in per lot price to cover the loss of property associated with wider easement widths.
 - b. Increased surety costs to cover the increased minimum surety amounts.
 - c. Hold Harmless Agreements – City not responsible for stormwater quality related fixtures within area encumbered by water/sewer/repurified water

easements (specialty pavement, porous concrete, bio-swales, etc).

Staff proposes for these changes to be incorporated to water, sewer and repurified water construction projects beginning with any approval on and after March 1st, 2019, except for the requirement of wider easement widths. Staff proposes that if a Master Plan or Preliminary Plat have been approved by Planning Commission prior to March 1, 2019, then the easement widths would be under the current requirements.

Council Priorities Served

Strong and Sustainable Financial and Economic Health

Having some robust policies and design criteria for utility infrastructure safeguards the community's public welfare and affords the City long-term, cost-effective maintenance of collection and distribution systems for water and wastewater services.

Excellent Services with a Focus on Customer Service

By publishing the appropriate development policies and design criteria, the development community is afforded the opportunity to select properly licensed contractors to build utility infrastructure that is ultimately dedicated and maintained by the City of Murfreesboro.

Engaging Our Community

Stakeholder communication is vital in a revising policies and procedures and design criteria that may have fiscal impacts on construction and land development.

Fiscal Impacts

The City of Murfreesboro will not have any immediate fiscal impacts in the form of cash outlay; however, there will be long-term financial gains to the City in terms of lower operation and maintenance costs for the sanitary sewer collection system, water distribution systems and permanent stormwater treatment controls.

Attachments:

1. PowerPoint – Water Resources Development Contract and General Design Criteria Revisions

COUNCIL COMMUNICATION

Meeting Date: 2/13/2019

Item Title: Pension Overview
Department: Administration
Presented by: Craig Tindall, Erin Tucker

Summary

Review of budget impact of the City's Pension Plan

Background Information

The City provides a defined benefit pension plan for some of its employees. The Plan was closed to further participants in on June 30, 2010. Currently, the Plan has 1,151 participants; 261 are receiving benefits, 260 are separated but vested employees with deferred benefits, and 630 currently employed participants. The City's contribution rate, which is the percentage of each participant's salary that the City contributes to the Plan, is 12.87%. As of June 30, 2017, the City's total pension liability is approximately \$150 million, which is more than 86% funded. The remaining unfunded liability is address through future contributions and investment returns.

Last year, the Pension Committee reviewed the Plan's assumed long-term rate of return (LTRR). The LTRR sets the assumed earnings of the Plan's investments. In the past, the LTRR was set at 7.25%. As is prudent, the Committee's advisors periodically provide information to the Committee about investment alternatives that would support the Plan's LTRR. In its October meeting, the Committee lowered the LTRR to 6.75%. That decision, if it remains in effect, results in the City contributing an additional \$1 million to the plan annually. Staff believes that a LTRR of 7% is consistent with the Committee's investment decisions and will result in approximately \$500,000 additional annual contribution by the City. The Committee is reviewing the LTRR at its February 13, 2019 meeting.

Additionally, Council requested that staff study a COLA increase for retirees. This study considered variables for the percentage COLA to be applied, the assumed LTRR, and the retiree group that would be provided a COLA. Four groups were designated by date of retirement: (1) current retirees, (2) retirees as of July 2015, the date when the MAG study was effective, (3) July 2008, the date of the last increase to pensioners, and (4) July 1998, a date of representing twenty years of retirement.

Council Priorities Served

Strong and Sustainable Financial and Economic Health

Providing an actuarial study of a proposed increase to retiree benefits provides Council with the information related to the budgetary impact of its decisions.

Fiscal Impact

Providing a COLA to retirees will have a fiscal impact by increasing the required contribution to the pension plan. The amount of the impact depending on decisions of Council.

Exhibits

1. Long-Term Rate of Return Presentation, Michael Guyton, Consulting Actuary.
2. Cola Study, Michael Guyton, Consulting Actuary

Exhibit 1



City of Murfreesboro, Tennessee Employees' Revised Pension Plan

Long-Term Rate of Return

Michael G. Guyton, FSA, EA
Consulting Actuary

Matthew Gilliland, FSA, EA, CERA
Consulting Actuary

February 13, 2019

Objectives

- Determine the appropriate long-term rate of return assumption
 - An appropriate assumption would balance the following items:
 - Maintain an adequate level of funding for benefits earned
 - Prevent intergenerational inequity where future generations would fund benefits earned by the current generation, or the current generation pays more than benefits earned now
 - Minimize future gains or losses by setting the assumption at a reasonable expected return
 - Retain predictability and stability in contribution levels each year to the extent possible

For more guidance on the appropriate funding refer to the Report of Blue Ribbon Panel on Public Pension Plan Funding



Cost vs. Contribution

The ultimate cost of the plan to the City is:

- Benefits Paid
- Plus Expenses
- Less Investment Income

The annual contribution is calculated by adding the following:

- Annual Normal Cost (expected benefits accrued in the year)
- Expenses
- Amortization of unfunded liability (23 years remaining at 7/1/18)
- Interest Cost

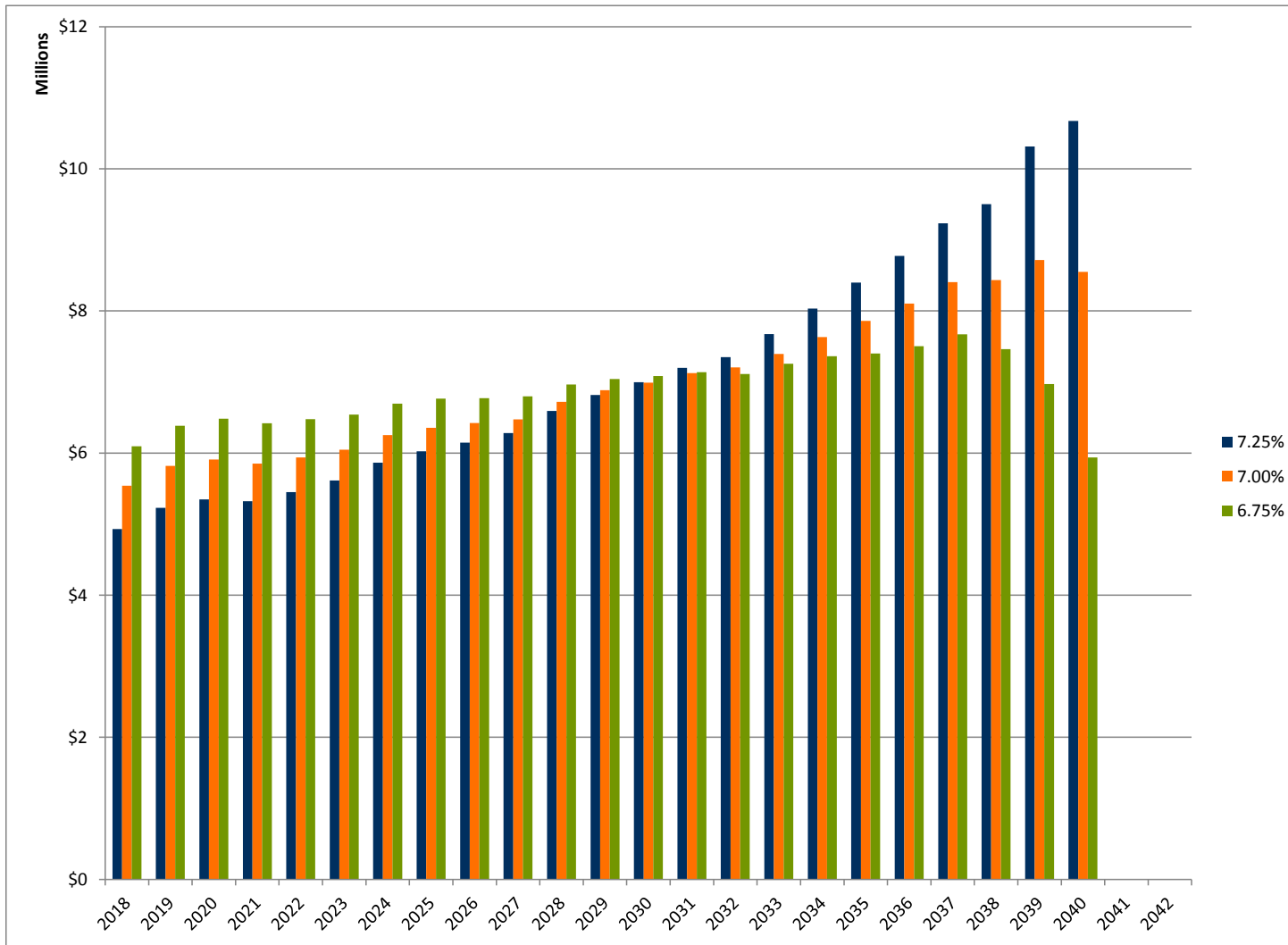
Estimated Contributions at Various LTRR

LTRR	Contribution 7/1/2018
7.25%	\$4,938,000
7.00%	\$5,525,000
6.75%	\$6,127,000

Proposed Portfolios and Long Term Rate of Return

- What does the proposed portfolios have to do with the long-term rate of return assumption (LTRR) ?
 - LTRR is the basis for discounting the future expected benefit payments under the plan. The higher LTRR the lower the present value of the liabilities which results in lower contributions
 - LTRR is based on the expected future investment returns of the portfolio
 - Future expected investment returns are based on a blend of historical returns and capital market assumptions
 - Capital market assumptions reflect the expected investment returns developed by economists and financial analysts
 - Typical time horizons 10 to 20 years – time horizon for the pension plan 60 years
- Current LTRR is 7.25%. We do not believe the current portfolio will support this assumption.

Median Contribution for Current Portfolio



- The current portfolio with the 7.25% LTRR is expected to greatly increase contributions in the future.
- Retaining this portfolio and assumption is expected to result in losses.
- This would not adequately fund the plan and push funding to the next generation.

Scenarios Reviewed

Portfolios

- **Baseline** – current portfolio
- **Chartwell Recommendation**
- **Active Portfolio**
- **Moderate Volatility Portfolio**

Assumed LTRR

- **7.25%**
- **7.00%**
- **6.75%**

The assumed rate of return is set by The City. If the rate of return is not reasonable then losses will start to accumulate over time leading to larger contributions and underfunding issues. We have looked at each assumed rate of return independent of the portfolio to show this risk to the plan.

Portfolio Returns

Baseline Portfolio

Percentile	1 Year	5 Years	10 Years	15 Years	20 Years	25 Years
15th	16.9%	11.3%	9.5%	9.1%	8.7%	8.6%
50th	6.6%	6.2%	6.4%	6.5%	6.5%	6.4%
85th	-3.6%	1.8%	3.1%	3.6%	3.9%	4.2%

Chartwell Portfolio

Percentile	1 Year	5 Years	10 Years	15 Years	20 Years	25 Years
15th	17.0%	11.2%	9.6%	9.0%	8.8%	8.5%
50th	6.6%	6.4%	6.5%	6.5%	6.6%	6.5%
85th	-3.4%	2.1%	3.4%	3.9%	4.2%	4.4%

Active Portfolio

Percentile	1 Year	5 Years	10 Years	15 Years	20 Years	25 Years
15th	17.7%	11.5%	10.0%	9.3%	8.9%	8.7%
50th	6.2%	6.3%	6.5%	6.6%	6.7%	6.6%
85th	-3.9%	1.9%	3.3%	3.8%	4.1%	4.3%

Moderate Volatility Portfolio

Percentile	1 Year	5 Years	10 Years	15 Years	20 Years	25 Years
15th	19.5%	12.4%	10.8%	10.1%	9.5%	9.3%
50th	6.8%	6.7%	7.0%	7.0%	7.1%	6.9%
85th	-4.4%	1.8%	3.3%	3.9%	4.3%	4.6%

The returns shown are forward looking returns only from the Capital Market Model

The Capital Market Model is a 20-year expectation that we have projected out

Since the plan has a longer time horizon than 20 years, an additional return for the difference in this horizon may be applied

Also we would look at historical rates and not just a future expectation when setting the return assumption

Uncertainty

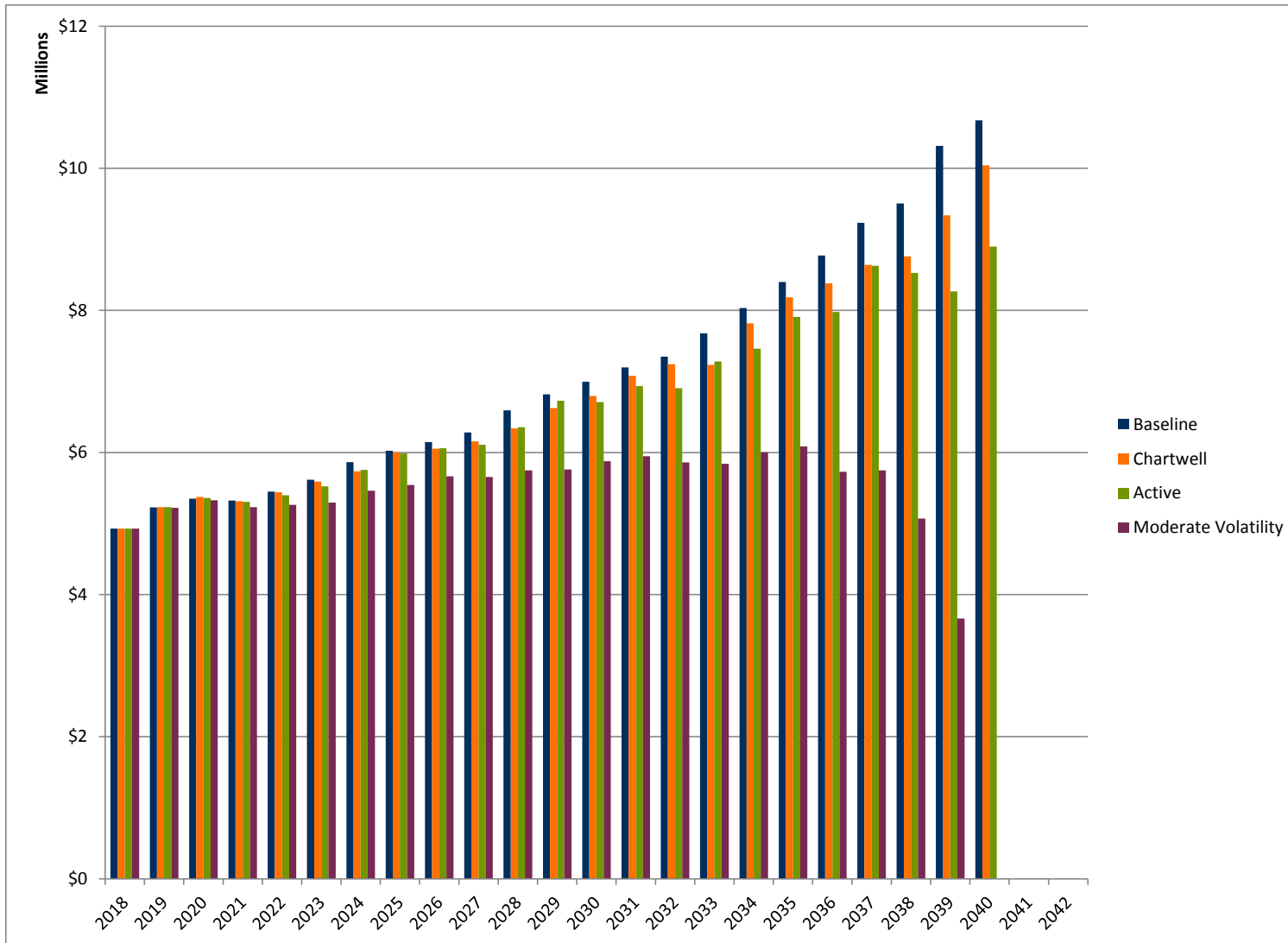
- Returns on the previous slide provide a range for each portfolio based on capital market inputs – the return in any particular year will not always be the 50th percentile
- Capital market assumptions change every year and these are educated guesses of future returns
- LTRR assumption should be supported by the portfolio recognizing the volatility in the portfolio.

Choosing the LTRR

- Is the LTRR reasonably attainable?
- The actuarial asset method which recognizes only 20% of the gains or losses over the assumed LTRR helps dampens the peaks and valleys in the actual investment returns
- The following slides illustrate the impact on funding if the portfolio does not support the LTRR
- Due to the time horizon – the portfolio or the LTRR can be changed periodically to be back in alignment
- The time horizon for the capital markets is shorter than the life of the plan. Generally, it is reasonable to add 25 to 50 basis points to the capital market assumption return to adjust to the long term time horizon

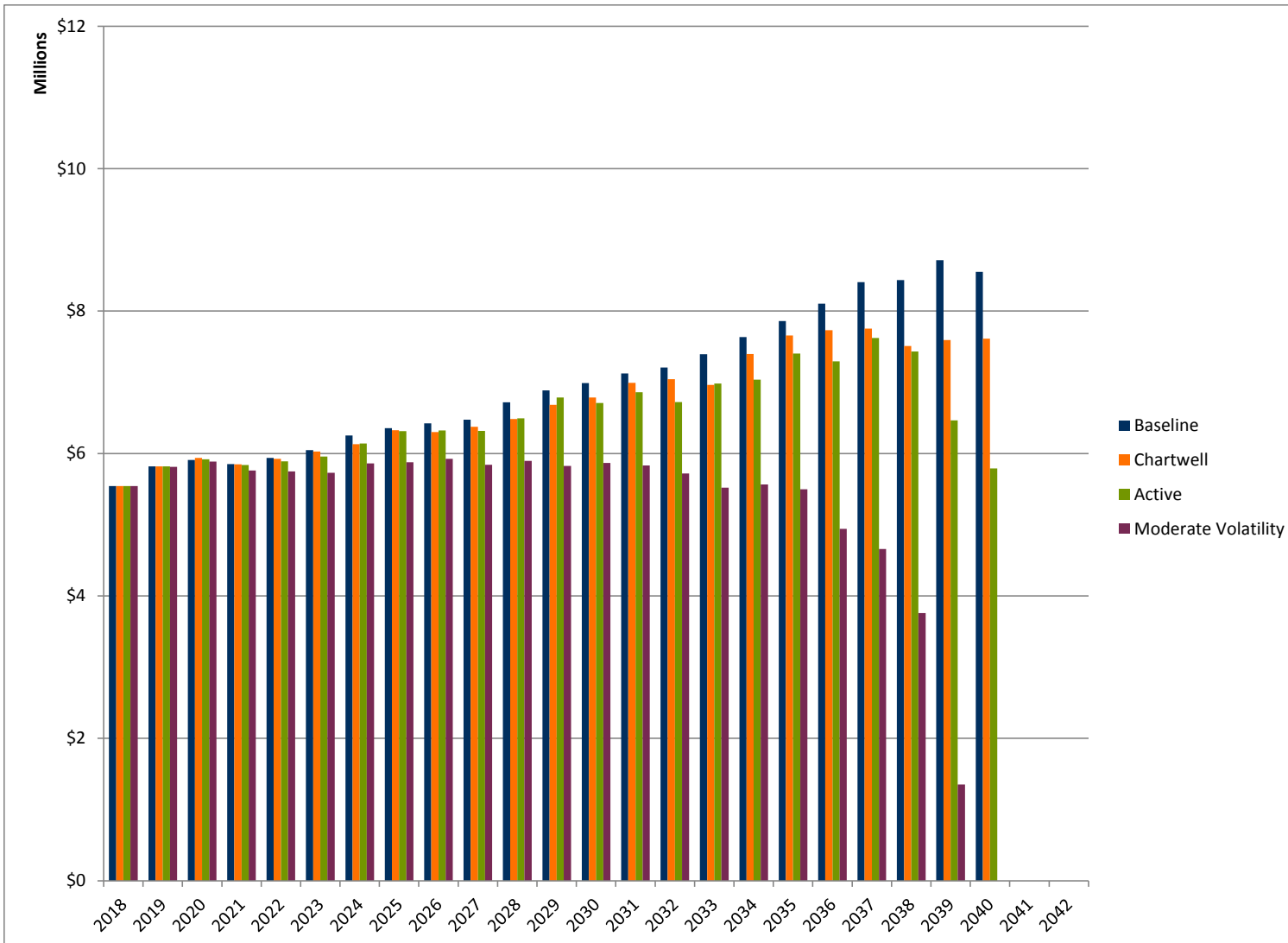


Median Contribution at 7.25% LTRR



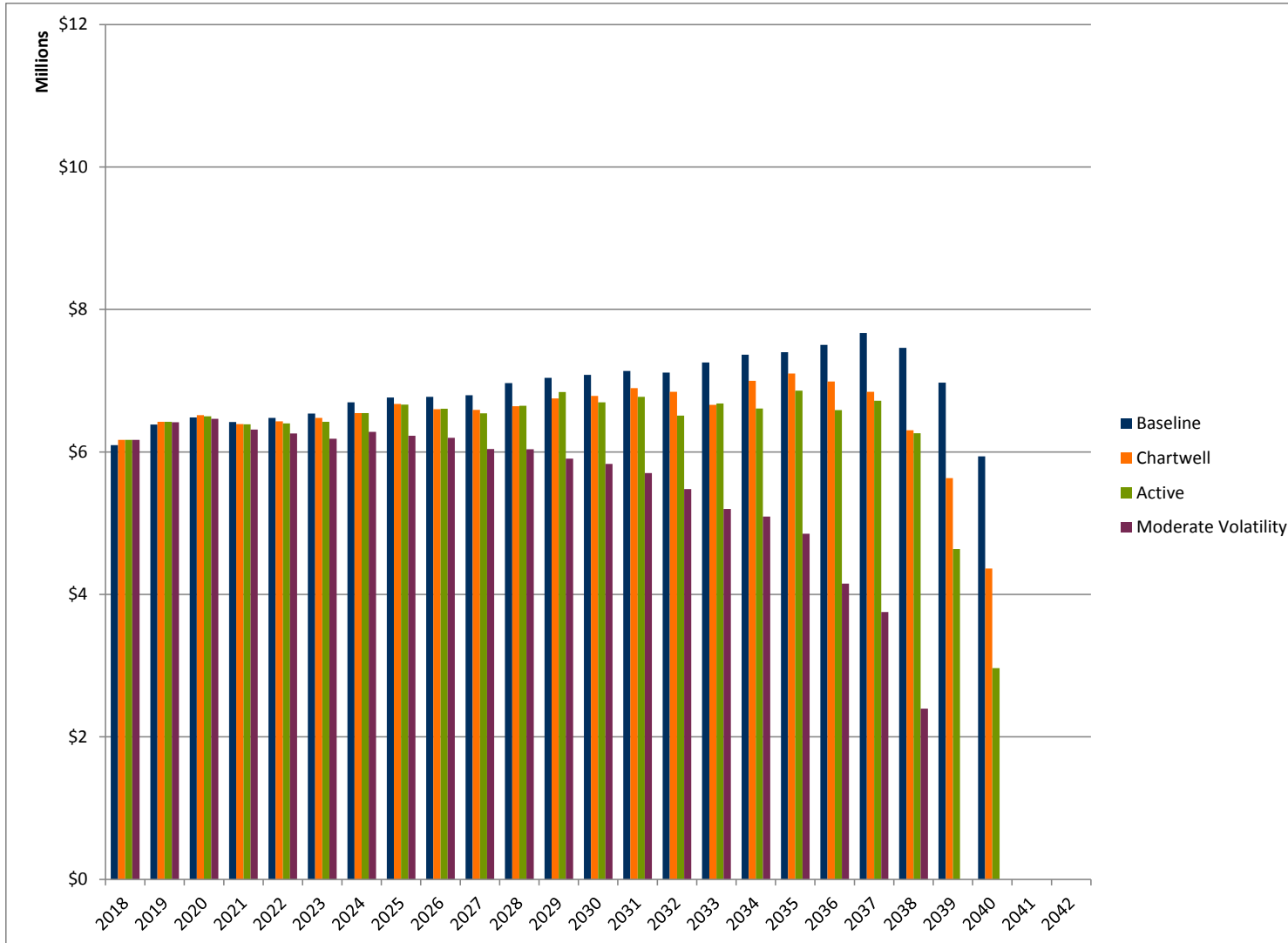
- Only the Moderate Volatility portfolio remains level on this assumption.
- The other portfolios are expected to accumulate losses and significantly increase over time.

Median Contribution at 7.00% LTRR



- The Moderate Volatility portfolio outperforms this assumption on average. This would accumulate gains and results in too much being funded now.
- The Chartwell and Active portfolios stay reasonably level over this assumption.

Median Contribution at 6.75% LTRR



- Only the baseline portfolio stays reasonably level over this assumption.
- The other portfolios are expected to outperform this return and decrease significantly at the tail end.

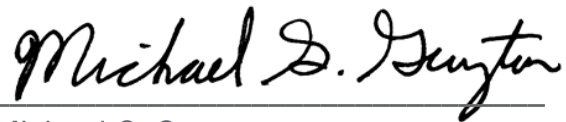
Decisions

- Long-term Rate of Return Assumption

For details about the assumptions and methods outlined here, please see the September 12, 2018 Findley presentation on Portfolio/Assumption/Funding Review. This presentation is a condensed summary of those results for the LTRR discussion.

Certification

This report has been prepared exclusively for the City of Murfreesboro to provide an analysis of their funding portfolio and assumptions. Findley Inc., is not responsible for consequences resulting from the use of any part of this report without prior authorization and approval. Determinations for other purposes, such as actual cash contributions, accounting expense, or judging actual benefit security upon plan termination, may be different from the results shown in this report. This report provides actuarial advice and does not constitute legal, accounting, tax, or investment advice. This report has been prepared under the supervision of Michael G. Guyton and Matthew R. Gilliland, members of the American Academy of Actuaries, Fellows of the Society of Actuaries, and consulting actuaries with Findley Inc. of Brentwood, Tennessee, who have met the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions herein. To the best of our knowledge this report has been prepared in accordance with generally accepted actuarial standards, including the overall appropriateness of the analysis, assumptions, and results and conforms to appropriate Standards of Practice as promulgated from time to time by the Actuarial Standards Board, which standards form the basis for the actuarial report. We are not aware of any direct or material indirect financial interest or relationship, including investment management or other services that could create, or appear to create, a conflict of interest that would impair the objectivity of our work.



Michael G. Guyton
Fellow, Society of Actuaries
Enrollment No. 17-03828
Phone: 615.665.5355



Matthew Gilliland
Fellow, Society of Actuaries
Enrollment No. 17-08120
Phone: 615.665.5306

Exhibit 2

City of Murfreesboro, Tennessee Employees' Revised Pension Plan

COLA Study
November 20, 2018

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 Summary of Actuarial Assumption 5

Certification

Purpose and use

This report has been prepared exclusively for the City of Murfreesboro, Tennessee Employees' Revised Pension Plan for the City of Murfreesboro. The computations in this report are for the City to determine the funding and accounting effect of introducing a one time Cost-of-living-adjustment (COLA) to certain groups of retirees.

Data

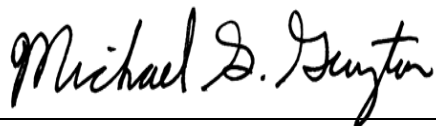
The calculations shown in this report have been prepared using employee data and plan documentation furnished by the City of Murfreesboro as of July 1, 2018. While we have not audited the data, we have reviewed it for reasonableness and internal consistency, and to the best of our knowledge, there are no material limitations to the data provided. A complete summary of the census data used in this report is available upon request.

Subsequent events

We are unaware of any subsequent event after July 1, 2018 which would have a material effect on the results presented in this report.

Professional qualifications

This report has been prepared under the supervision of Michael G. Guyton, a member of the American Academy of Actuaries, a Fellow of the Society of Actuaries, and a consulting actuary with Findley, Inc., who has met the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions herein. To the best of our knowledge this report has been prepared in accordance with generally accepted actuarial standards and our understanding of Government Accounting Standards Board Statement No. 68, including the overall appropriateness of the analysis, assumptions, and results and conforms to appropriate Standards of Practice as promulgated from time-to-time by the Actuarial Standards Board, which standards form the basis for the actuarial report. We are not aware of any direct or material indirect financial interest or relationship that could create, or appear to create, a conflict of interest that would impair the objectivity of our work. The undersigned is available to provide supplemental information or explanation.



Michael G. Guyton
Fellow, Society of Actuaries
Enrollment No. 17-03828
Phone 615-665-5355

November 20, 2018

Date

Summary

Accounting Impact

Under the GASB accounting rules, any increase to past benefits for the retired group will be recognized immediately for accounting purposes. Therefore any increase to the unfunded liability will flow directly to the expense for the year.

The following tables show the approximate impact of each increase on the expense:

1% COLA Unfunded		Discount Rate	
		6.75%	7.00%
Retired before	07/01/2018	\$ 601,000	\$ 589,000
	07/01/2015	\$ 372,000	\$ 365,000
	07/01/2008	\$ 151,000	\$ 148,000
	07/01/1998	\$ 16,000	\$ 16,000

2% COLA Unfunded		Discount Rate	
		6.75%	7.00%
Retired before	07/01/2018	\$ 1,203,000	\$ 1,178,000
	07/01/2015	\$ 744,000	\$ 730,000
	07/01/2008	\$ 302,000	\$ 296,000
	07/01/1998	\$ 33,000	\$ 32,000

3% COLA Unfunded		Discount Rate	
		6.75%	7.00%
Retired before	07/01/2018	\$ 1,804,000	\$ 1,768,000
	07/01/2015	\$ 1,116,000	\$ 1,095,000
	07/01/2008	\$ 452,000	\$ 444,000
	07/01/1998	\$ 49,000	\$ 49,000

Funding Impact

The impact of the COLA on annual funding may be spread over the expected lifetime of the participants receiving the benefit, but should be sufficiently short so that there would not be a concern with intergenerational equity. With guidance from the City, we have set the amortization period at 10-years for all scenarios except the scenario for retirees before 07/01/1998 where we have used an amortization period of 7-years to adequately reflect the older population of this group.

The following table shows the additional annual amount that will need to be funded to provide the COLA:

1% COLA Amortization		Discount Rate	
		6.75%	7.00%
Retired before	07/01/2018	\$ 79,300	\$ 78,400
	07/01/2015	\$ 49,100	\$ 48,600
	07/01/2008	\$ 19,900	\$ 19,700
	07/01/1998	\$ 2,800	\$ 2,800

2% COLA Amortization		Discount Rate	
		6.75%	7.00%
Retired before	07/01/2018	\$ 158,600	\$ 156,800
	07/01/2015	\$ 98,100	\$ 97,200
	07/01/2008	\$ 39,800	\$ 39,400
	07/01/1998	\$ 5,600	\$ 5,600

3% COLA Amortization		Discount Rate	
		6.75%	7.00%
Retired before	07/01/2018	\$ 237,800	\$ 235,200
	07/01/2015	\$ 147,200	\$ 145,800
	07/01/2008	\$ 59,600	\$ 59,100
	07/01/1998	\$ 8,500	\$ 8,400

Basis of Valuation

Summary of Provisions of the Plan

The plan provisions are the same as the June 30, 2018 Accounting report.

Summary of Actuarial Assumption

All assumptions and methods are the same as the June 30, 2018 Accounting report unless otherwise noted below.

Discount rate

6.75% and 7.00% per annum, compounded annually

Amortization period

The amortization period for funding the special COLA benefits is spread over 10-years for all groups except the group of those who retired before July 1, 1998 which is spread over 7-years

Mortality rates

RP-2014 Mortality Table

Mortality improvements

RP-2014 Combined Mortality Table with generational mortality improvement under Mortality Improvement Scale MP-2017